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Supreme Court, U.S.
FILED

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No.

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October 1998 Term

Raymond B. Sherwood

Petitioner,

v.

Marilyn Hall Patel

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDEX III

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

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APPENDEX III

Raymond B. Sherwood
1612 Merian Drive
Pleasant Hill, California 94523
(925) 827-2604
IN PROPRIA PERSONA

Raymond Bailey, Sherwood, SUI JURT-S
1612 MERIAN DR.
PLEASANT HILL, CALIFORNIA 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood a proper and necessary Party Plaintiff, v.. Marilyn Hall Patel in her private person Defendant, _____/	No. C 97-02796 CW PLAINTIFF'S MOTION TO VACATE ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT Date: December 12, 1997 Time: 10:30 a.m.

MOTION

Comes now Raymond Bailey Sherwood, plaintiff in the above entitled cause and respectfully moves the court to **VACATE ORDER DENYING PLAINTIFF'S MOTION FOR DEFAUT JUDGMENT** for the reasons listed **below.**

STATEMENT

Plaintiff filed a complaint on July 30, 1997, against Marilyn Hall Patel, as an individual, who operated outside the scope of her authority as a federal judge because she lacked personal and subject matter jurisdiction. The defendant failed to timely respond to the complaint and plaintiff filed a Motion For Default Judgment on October 3, 1997 and served the defendant the Notice of Motion for Default Judgment and the Motion for Default

Judgment along with the Plaintiff's Declaration in Support of Motion and the defendant failed to supply any factual basis for a meritorious defense either by motion or affidavit.

DISCUSSION

I

SERVICE WAS PROPER

Service of the complaint and summons was proper under Rule 4(e)(2) of the Federal Rules of Civil Procedure for service upon Individuals Within a Judicial District of the United States. The defendant was notified of the motion for Default Entry and the motion for Default Judgment along with the plaintiff's Declaration in Support of the Default on October 3, 1997 as evidenced by the Proof of Service filed with the court on October 3, 1997 and this fact is recognized on page 2, lines 13 to 16, of the court's ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT, along with the fact that the defendant failed to respond to either the Motion for Entry or the Motion for Default Judgment.

PLAINTIFF OBJECTS

The plaintiff recognizes; 'that a defendant's default does not automatically entitle a plaintiff to a default judgment however the defendant must raise the issues of contention because it is an Abuse of Process for the court to act as an Attorney from the Bench in support of the defendant.

Re: ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

page 1, lines 16-20 the court states, "Defendant has filed no opposition. This matter will be decided on the papers that have been submitted. Having considered all of the papers filed by the parties, the Court denies the motion." If this matter is decided on the papers that have been submitted and the defendant has filed no papers and the plaintiff's papers support the default judgment the court is obligated to grant the Default Judgment.

> Defendant's default in failing to answer complaint was willful indifference to court's authority, permitting district court to refuse to set aside entry of default on good cause grounds; there was no evidence demonstrating that defendant did not have actual knowledge of the complaint, summons provided that failure to answer within 20 days would result in an entry of a default judgment, and defendant never filed an answer or otherwise pled to plaintiff's complaint. *Hunt v. Kling Motor Co., D.C. Kan. 1994, 841 F. Supp. 1098.*
>
> Where the complaint is verified, and the defendant fails to answer, plaintiff is entitled to judgment on the complaint, without proof of the facts. *Tuolumne Redemption Co. v. Patterson,18 Cal 415; Lick v Stockdale, 18 Cal 219.*
>
> Although law generally favors hearing on merits, plaintiff is entitled to default judgment when defendant fails to answer, demur, or give notice of certain other motions. *Ely v Gray (1990) 224 Cal. App. 3d 1257, 1260, 274 Cal. Rptr. 536.*

Relief from a default judgment must be sought under Rule 60(b) and there is no evidence that defendant requested such relief.

On page 1 lines 19-20 the court has referenced papers filed by "the parties", yet there is no evidence of any papers being filed except by one party, the plaintiff, and the courts decision seems to be based on a conflicting

statement. In fact, the entire ORDER is a conglomeration of statements and arguments that are absent of a response from the defendant which means that the defendant's position is being argued or presented as an attorney from the bench.

III

DEFENDANT HAD NO JURISDICTION

Plaintiff objects to court's citing that a "judge" has absolute judicial immunity when acting and ruling outside of the law and outside of the scope of their office. Such action would be sedition, treason and certainly anarchy.

At page 4 lines 22-26 the court properly recognized what are causes of action in this complaint, wherein the defendant acts in the clear absence of all jurisdiction or performs an act that is not judicial in nature. The complaint clearly proved that defendant recklessly acted and ruled contrary to issues of law contained in the general and permanent laws of the United States Codes and such law is not subject to challenge by court or jury. On page 5 line 4-6 the courts reference by cite of Title 26 U.S.C. § 7402(b) as legal evidence of law or having subject matter jurisdiction is sophistry. A statute is not self executing but must have a complaint to establish jurisdiction and this issue is the very subject of the complaint to which the court failed to acknowledge or take judicial notice.

The court erred in claiming a secondary issue of personal jurisdiction by geographic location. Due process guarantees that personal jurisdiction can only be gained after subject matter jurisdiction is obtained and documented. There is

no subject matter jurisdiction without a summons and complaint under Rule 4(a) of the Federal Rules of Civil Procedure.

The rule that governs the summons governs the whole topic of jurisdiction of the person, which is the principle of civil procedure. Rule 4 regulates personal jurisdiction single-handedly and subdivision (a) governs the issuance of the summons, which the clerk issues in federal practice. The transcript shows that "Judge" Patel "admitted" there was no complaint, therefore she could have NO jurisdiction!

The ultimate source of subject matter jurisdiction is the Constitution itself, where Article 3, § 2, lists its outer limits as follows:

ARTICLE III

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States,...

It takes an Act of Congress (a statute) to actually confer the jurisdiction on a district court, and the presence of subject matter jurisdiction, usually with a citation of the jurisdiction conferring statute, must be demonstrated by the plaintiff (Patel) in every case. There must be a "process" by any paper whereby a person is subjected to a courts jurisdiction or otherwise made to comply with its demands. There was no citation of a jurisdiction statute. Furthermore, the California Rules of Court (Federal) 1997 Revised Edition clearly confirms this requirement in: **3-5. Jurisdictional Statement.**

(a) **Jurisdiction.** Each **complaint,** petition., counterclaim and cross

claim shall include a separate paragraph entitled "Jurisdiction". The paragraph will identify the statutory or other basis for federal jurisdiction and the facts supporting such jurisdiction and the facts supporting such jurisdiction.

In this matter the "Patel" court failed miserably and acted outside of the law and perpetuated the litigation against the defendant in her individual capacity for action outside the oath and duties mandated by the United States Constitution at ARTICLE VI., Clause 2.: to wit: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land: and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding (Emphasis added).

IV

NO DUE PROCESS

The plaintiff's Motion for Default Judgment was duly filed and scheduled for a Hearing on November 7, 1997 but the court, without Notice, issued a decision on November 3, 1997 and thusly denied the plaintiff the opportunity to examine evidence and present oral testimony which is a denial of due process.

"The fair hearing essential to meet minimum requirements of due process includes not only rudimentary fairness in conduct of hearing when and where held, but also reasonable fair opportunity to be present at time and place fixed to cross-examine any opposing witnesses, to offer evidence, and to be heard at Least briefly in defense." *Jeffries v. Olesen, D.C. Cal 1954,* 121 F *Supp. 462.*

CONCLUSION

Plaintiff has no argument that a judge has judicial immunity when the judge has jurisdiction, but in this case the defendant has failed the jurisdiction requirements.

A judge loses absolute immunity only when he or she acts in the clear absence of all jurisdiction ... Schucker v. Rockwood, 846 F. 2d 1202, 1204, 9th Cir. *See Forrester* v. *White*,– U.S.–, 108 S. Ct. 538, 544-46, 398 L. Ed.2d 555 (1988); *Stump*, 435 U.S. at 356-57 & n. 7, 98 S.Ct. at 1105 & n. 7; *Ashelman*, 793 F.2d at 1075 .

Defendant has not claimed immunity when she has failed to respond to the complaint and make such a claim.

Respectfully submitted on November 12, 1997.

Signed: Raymond B. Sherwood

1612 Merian Dr.

Pleasant Hill, California 94523

U.S. Department of Justice
United States Attorney
Northern District of California
Federal Building
1301 Clay Street, Suite 340S
Oakland, California 94612-5217

November 24, 1997

Mr. Raymond B. Sherwood
1612 Merian Dr.
Pleasant Hill, CA 94523

Re: Sherwood v. The Honorable Marilyn Hall Patel

Civil Action No. C-97-2796-CW

Dear Mr. Sherwood:

We have received a copy of the Summons and Complaint in this action. However, you have not properly served the United States or its agencies or officers.

Please note that Rule 4 (i), Federal Rules of Civil Procedures, as amended, effective December 1, 1993, requires the following:

(I) Service Upon the United States, and Its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States Attorney for the district in which the action is brought or to an Assistant United States Attorney or clerical employee

designated by the United States Attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the Office of the United States Attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) Service upon an officer, agency or corporation of the United States shall be effected by serving the United States in the manner prescribed by paragraph (1) of the subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency, or corporation.

(3) The court shall allow a reasonable time for service of process under this subdivision for the purpose of curing the failure to serve multiple officers, agencies, or corporations of the United States if the plaintiff has effected service on either the United States Attorney or the Attorney General of the United States.

If you have any questions regarding this matter, please feel free to call me.

Very truly yours,

MICHAEL J. YAMAGUCHI
United States Attorney

Signed: SUSAN L. KAMLET
Assistant United States Attorney

SLK/er

cc:The Honorable Claudia Wilken United States District Judge

U.S. Department of Justice
Torts Branch

Federal Programs Branch
U.S. Department of Justice10th & Constitution Aves., N.W.
Washington, D.C. 20530

Administrative Office of U.S. Courts
General Counsel
811 Vermont Avenue, N.W., Room 641
Washington, D.C. 20544

December 8, 1997

Susan L Kamlet
Asst. U.S. Attorney
U.S. Dept. of Justice
Federal Building
1301 Clay Street. Suite –340S
Oakland. Calif. 94612-5217

Re: Sherwood v. Patel C 97-2796 CW

Dear Mz. Kamlet:

Thank you for your letter of information dated November 24, 1997 (copy attached)

Please note that I do agree –with your interpretation of Rule 4(I) of the Federal Rules of Civil Procedure, as they apply to service upon the United States, its Agencies, Corporations, or Officers. However, my Complaint is against Marilyn Hall Patel in her private person, as clearly indicated on the Title page of the Complaint (copy attached) and on the Proof of Service (copy attached, see 4a) as an individual defendant, and as such I believe service was proper.

The defendant, Marilyn Hall Patel, as a private person has failed to respond to this complaint which raises the question of your involvement in these issues, are you representing the private person, Marilyn Hall Patel?

It appears that you and Judge Wilken are attempting to influence me to involve the United States in this action but I do not believe the U.S. should be

a party to an action involving an individual operating outside the scope of her office, however, I will comply with your request and forward a copy of the Summons and Complaint to United States Attorney Michael J. Yamaguchi and United States Attorney Janet Reno, keeping in mind that the Complaint is against Marilyn Hall Patel as a private person.

Thank you for your suggestion and consideration.

Sincerely,

signed RAYMOND B. SHERWOOD
1612 Merian Dr.
Pleasant Hill, Calif. 94523

cc: Judge C. Wilken
Federal Programs Branchj
General Counsel, Administrative Office of U.S. Courts
Congressmen Lott, Archer, Gramm, Gingrich, Lugar, and Crane.

Raymond Bailey, Sherwood, SUI JURIS
1612 MERIAN DR.
PLEASANT HILL, CALIF. 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
a proper and necessary
Party

Plaintiff,

v.

Marilyn Hall Patel in
Her private person

Defendant

_____/

File Number. C 97-02796 CW

PLAINTIFF'S MOTION FOR
LEAVE TO FILE A MOTION
FOR RECONSIDERATION

Date: January 16, 1998
Time: 10:30 a.m.

MOTION

Comes now Raymond Bailey Sherwood, plaintiff in the above-entitled cause and respectfully moves the court to GRANT A MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION for the reason of manifest failure by the court to consider material facts which were presented to the court before such interlocutory order. listed below.

Plaintiff OBJECTS to this court considering ANY information contrary to plaintiff's position, when defendant has failed to respond to the complaint. Such action indicates the court acted with bias and prejudice against the plaintiff and is acting as an attorney from the bench in violation of Title 28 Sec. 454.

Any assertion of plaintiff's claims for relief must be upheld by the court

unless those claims are denied or challenged by "the defendant" an offer of defense by the court is evidence the court is acting as an attorney from the bench.

The court's rulings on Default, Service of the Complaint and judicial immunity are all issues that are required to be raised by the defendant and the court's arguments are points that could be raised by the defendant but to present such arguments from the bench is clearly a violation of Title 28 Sec. 454.

> Title 28 Sec. 454. Practice of law by justices and judges.
> Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

STATEMENT

Plaintiff filed a complaint on July 30, 1997, against Marilyn Hall Patel, as an individual private person, who operated outside the scope of her authority as a federal judge because she lacked personal and subject matter jurisdiction. Defendant was served the complaint on August 1, 1997 and it has been 120 days to this date that the defendant has failed to supply any factual basis for a meritorious defense either by motion or affidavit.

Federal Rules of Civil Procedure 8(c) state that a defendant must plead "any matter constituting an avoidance or affirmative defense." and the summons informs the defendant "an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against

you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DISCUSSION

In exercising its discretion in determining whether to grant a default judgment, the district court may properly consider such factors as: (1) whether the defendant's failure to plead or otherwise defend is largely technical; (2) whether the plaintiff will be prejudiced if the default judgment is not entered, and if so, to what extent; and (3) whether entry of the default judgment would result in injustice. The policy reasons for allowing default judgments were expressed by the D.C. Federal Court in H.F. Livermore Corporation v. Aktiengesellschaft Gebruder Loepfe, 432 F.2d 689 (D.C. 1970), where the Court stated:

> (A] Default judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party. In this instance, the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights.

CONCLUSION

Defendant, Marilyn Hall Patel, a Private person, has failed to plead or answer the complaint which was filed July 30, 1997 and served upon the defendant August 1, 1997. Marilyn Hall Patel is in DEFAULT in the absence of a responsive pleading.

Therefore Plaintiff requests this court for leave to file a Motion for Reconsideration.

Respectfully submitted this 11th day of December 1997

signed: Raymond B. Sherwood

A-25 cont.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD,

Plaintiff,

v.

MARILYN HALL PATEL
vi.
Defendant.

/

No. C 97-2796 CW

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION

On December 11, 1997, Plaintiff filed a motion for leave to file a motion for reconsideration. Having considered Plaintiff's motion, and good cause not appearing,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to file a motion for reconsideration is DENIED. The hearing set for January 16, 1998, is vacated.

Dated: Dec 18 1997

signed: CLAUDIA WILKEN

United States District Judge.

IN THE UNITED STATES DISTRICT COURT-

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWCOD

Plaintiff

No. C 97-02796 CW

V.

MARILYN HALL PATEL, Judge

ORDER OF DISMISSAL

Defendant.

_____/

On October 31, 1997, the Court issued an Order Continuing Case Management Conference wherein the Case Management Conference, previously set for October 31, 1997, was continued to January 9, 1998, at 1:30 p.m. On January 9, 1998, a Case Management Conference was held. Sue Kamlet, Assistant U. S. Attorney, specially appeared on behalf of the Defendant. No appearance was made by or on behalf of the Plaintiff. Accordingly,

IT IS HEREBY ORDERED that the above-captioned action is DISMISSED for failure to prosecute.

Dated: Jan 13 1998

signed: CLAUDIA WILKEN

United States District Judge

Raymond Bailey, Sherwood, SUI JURIS
1612 MERIAN DR.
PLEASANT HILL, CALIFORNIA 94523
(510) 827-2604
IN PROPRIA PERSONA

IN THE UNITED STATES DISTRICT COURT FOR THE—

NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
a proper and necessary
Party

Plaintiff,

v.

Marilyn Hall Patel in
Her private person

Defendant.
_____/

File Number. C 97-2796 CW

PLAINTIFF'S OBJECTION TO
COURT'S ORDER OF DISMISSAL

On January 13, 1998, United States District Judge Claudia Wilken issued an ORDER OF DISMISSAL (copy attached) for failure to prosecute, to which the plaintiff objects for the following reasons:

DEFENDANT IS IN DEFAULT

The defendant, Marilyn Hall Patel, has failed to respond to the plaintiff's Complaint and is currently in DEFAULT.

PLAINTIFF HAS ATTEMPTED TO PROSECUTE

Plaintiff filed a MOTION FOR JUDGMENT BY DEFAULT BY THE COURT on October 3, 1997, which the Court denied on November 3, 1997.

Plaintiff filed a MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION on December 11, 1997, which was denied by the Court on

December 18, 1997.

CASE MANAGEMENT CONFERENCE RESCHEDULED

Because the defendant failed to respond to the plaintiff's Complaint, the Case Management Conference originally scheduled for October 31, 1997 was RESCHEDULED by the Court to January 9, 1999, and again RESCHEDULED to January 16, 1998.

Plaintiff filed a MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION on December 11, 1997, and on December 12, 1997 Plaintiff received a telephone message from the Court advising that the Case Management Conference scheduled for January 9, 1998 would be held along with the MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION.

HEARING VACATED

Plaintiff received a Court Order (copy attached) filed December 18, 1997 denying plaintiff's Motion for Leave and vacating the hearing set for January 16, 1998.

ORDER OF DISMISSAL

On January 20, 1998 plaintiff received an ORDER OF DISMISSAL (copy attached) for failure to prosecute based upon plaintiff's failure to appear at the (vacated] Case Management Conference.

DEFENDANT IS WITHOUT REPRESENTATION

There is no record of notification that Assistant U. S. Attorney Sue Kamlet is representing the defendant in this matter, although, plaintiff did

receive a letter from Assistant U.S. Attorney Susan L. Kamlet, dated November 24, 1997 (copy attached) where she advises the plaintiff on service of Summons and Complaint but she fails to state her involvement with the issues.

Plaintiff sent a letter to Assistant U.S. Attorney Kamlet dated December 8, 1997 (copy attached) and questioned her involvement in these issues. Assistant U.S. Attorney Kamlet has failed to respond to this letter, or make any indication that she is representing the defendant.

DENIAL OF DUE PROCESS

The ORDER OF DISMISSAL is a denial of due process, a miscarriage of justice, and an abuse of legal process. Based upon the above cited reasons, the plaintiff respectfully request the Court to set aside the Order Of Dismissal and hear this case on its merits.

signed: Raymond Bailey Sherwood

Dated: January 26, 1998

IN THE UNITED STATES DISTRICT COURT-

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWCOD

Plaintiff

No. C 97-02796 CW

V.

MARILYN HALL PATEL, Judge

ORDER OF DISMISSAL

Defendant.

_____/

On October 31, 1997, the Court issued an Order Continuing Case Management Conference wherein the Case Management Conference, previously set for October 31, 1997, was continued to January 9, 1998, at 1:30 p.m. On January 9, 1998, a Case Management Conference was held. Sue Kamlet, Assistant U. S. Attorney, specially appeared on behalf of the Defendant. No appearance was made by or on behalf of the Plaintiff. Accordingly,

IT IS HEREBY ORDERED that the above-captioned action is DISMISSED for failure to prosecute.

Dated: Jan 13 1998

signed: CLAUDIA WILKEN

United States District Judge

A-28 cont.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD,

Plaintiff,

vii.

MARILYN HALL PATEL
viii.
Defendant.

/

No. C 97-2796 CW

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION

On December 11, 1997, Plaintiff filed a motion for leave to file a motion for reconsideration. Having considered Plaintiff's motion, and good cause not appearing,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to file a motion for reconsideration is DENIED. The hearing set for January 16, 1998, is vacated.

Dated: Dec 18 1997

signed: CLAUDIA WILKEN

United States District Judge.

U.S. Department of Justice
United States Attorney
Northern District of California
Federal Building
1301 Clay Street, Suite 340S
Oakland, California 94612-5217

November 24, 1997

Mr. Raymond B. Sherwood
1612 Merian Dr.
Pleasant Hill, CA 94523

Re: Sherwood v. The Honorable Marilyn Hall Patel

Civil Action No. C-97-2796-CW

Dear Mr. Sherwood:

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Please note that Rule 4 (i), Federal Rules of Civil Procedures, as amended, effective December 1, 1993, requires the following:

(I) Service Upon the United States, and Its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States Attorney for the district in which the action is brought or to an Assistant United States Attorney or clerical employee

A-28 cont.

designated by the United States Attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the Office of the United States Attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) Service upon an officer, agency or corporation of the United States shall be effected by serving the United States in the manner prescribed by paragraph (1) of the subdivision and by also sending a copy of the summons and of the complaint by registered or certified mail to the officer, agency, or corporation.

(3) The court shall allow a reasonable time for service of process under this subdivision for the purpose of curing the failure to serve multiple officers, agencies, or corporations of the United States if the plaintiff has effected service on either the United States Attorney or the Attorney General of the United States.

If you have any questions regarding this matter, please feel free to call me.

Very truly yours,

MICHAEL J. YAMAGUCHI
United States Attorney

Signed: SUSAN L. KAMLET
Assistant United States Attorney

SLK/er

cc:The Honorable Claudia Wilken United States District Judge

- U.S. Department of Justice
  Torts Branch

  Federal Programs Branch
  U.S. Department of Justice10th & Constitution Aves., N.W.
  Washington, D.C. 20530

  Administrative Office of U.S. Courts
  General Counsel
  811 Vermont Avenue, N.W., Room 641
  Washington, D.C. 20544

December 8, 1997

Susan L Kamlet
Asst. U.S. Attorney
U.S. Dept. of Justice
Federal Building
1301 Clay Street. Suite –340S
Oakland. Calif. 94612-5217

Re: Sherwood v. Patel C 97-2796 CW

Dear Mz. Kamlet:

Thank you for your letter of information dated November 24, 1997 (copy attached)

Please note that I do agree –with your interpretation of Rule 4(I) of the Federal Rules of Civil Procedure, as they apply to service upon the United States, its Agencies, Corporations, or Officers. However, my Complaint is against Marilyn Hall Patel in her private person, as clearly indicated on the Title page of the Complaint (copy attached) and on the Proof of Service (copy attached, see 4a) as an individual defendant, and as such I believe service was proper.

The defendant, Marilyn Hall Patel, as a private person has failed to respond to this complaint which raises the question of your involvement in these issues, are you representing the private person, Marilyn Hall Patel?

It appears that you and Judge Wilken are attempting to influence me to involve the United States in this action but I do not believe the U.S. should be

a party to an action involving an individual operating outside the scope of her office, however, I will comply with your request and forward a copy of the Summons and Complaint to United States Attorney Michael J. Yamaguchi and United States Attorney Janet Reno, keeping in mind that the Complaint is against Marilyn Hall Patel as a private person.

Thank you for your suggestion and consideration.

Sincerely,

signed RAYMOND B. SHERWOOD
1612 Merian Dr.
Pleasant Hill, Calif. 94523

cc: Judge C. Wilken
Federal Programs Branchj
General Counsel, Administrative Office of U.S. Courts
Congressmen Lott, Archer, Gramm, Gingrich, Lugar, and Crane.

IN THE UNITED STATES DISTRIC

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY SHERWOOD,

Plaintiff,

MARILYN HALL PATEL,

Defendant.

/

No. C 97-02796 CW

ORDER REAFFIRMING DISMISSAL OF CASE

Plaintiff objects to the Court's Order of Dismissal entered on January 18, 1998 and requests that it be set aside. In that Order the Court dismissed this case for failure to prosecute when Plaintiff failed to attend the Case Management Conference held on January 9, 1998. Plaintiff states that he did not attend the January 9 Case Management Conference because he had received a telephone message from the Court advising him that it had been rescheduled to January 16, 1998. Plaintiff states that he subsequently received written notice from the Court vacating the Case Management Conference scheduled for January 16.

Plaintiff is incorrect. However, even if he were correct, this case was properly dismissed. As explained in the Court's Order Denying Plaintiff's Motion for Default Judgment, Defendant Judge Marilyn Hall Patel is protected from lawsuits by absolute judicial immunity. Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996), cert. denied, 117 S. Ct. 963 (1997). Judicial immunity applies

even when the judge acts erroneously, or in excess of judicial authority or the act is injurious to the plaintiff. Id. at 1244.

Plaintiff continues to contend that he is suing Judge Patel in her individual capacity, not in her official capacity as a judge. However, as explained in the Order Denying Plaintiff's Motion for Default Judgment, Judge Patel was acting in her official capacity as a judge when she issued the order to show cause which is the subject of Plaintiff's complaint. Judge Patel is immune from Plaintiff's civil suit for damages because it is based upon her judicial actions.

Because Plaintiff has failed to state a justiciable claim against Judge Patel, this case was properly dismissed.

CONCLUSION

For the foregoing reasons, the Court overrules Plaintiff's objection to the Court's Order of Dismissal and reaffirms dismissal of this case. The clerk shall close the file and no more filings shall be received in this closed docket.

IT IS SO ORDERED.

Dated: MAR 10 1998 signed: CLAUDIA WILKEN

United States District Judge

Raymond Bailey, Sherwood, SUI J-URIS
1612 MERIAN DRIVE
PLEASANT HILL, CALIFORNIA REPUBLIC 94523
(510) 827-2604
IN PROPRIA PERSONA

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Raymond Bailey, Sherwood
a proper and necessary
party
Plaintiff,

v.

Marilyn Hall Patel
In her private person
Defendant.
_____/

Case No.:C 97-2796 CW

NOTICE OF APPEAL

Notice is hereby given that Notice is hereby given that Raymond Bailey, Sherwood appeals to the United States Court of Appeals for the Ninth Circuit from the: ORDER REAFFIRMING DISISSAL OF CASE entered in this action on March 13, 1998.

Signed: Raymond B. Sherwood

Dated: March 20, 1998

1612 Merian Dr.
Pleasant Hill, Calif. 94523
Phone (510) 827-2604

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Raymond Bailey Sherwood
Appellant / Petitioner
Vs.
Marilyn Hall Patel
Appellee / Respondent

CASE NO. 98-15496

APPELLANT'S OR PETITIONER'S INFORMAL BRIEF

1. Jurisdiction

a. Timeliness of Appeal or Petition:

(I) Date of entry of judgment or order

of order of district court: March 13, 1998

(ii) Date of service of any motion made after

judgment (other than for fees and costs) :

(iii) Date of entry of order deciding motion

(iv) Date notice of appeal or petition filed March 20, 1998

(v) For prisoners, date you gave notice of appeal to

prison authorities

b. PLEASE ATTACH ONE COPY OF EACH OF THE FOLLOWING:

1. The order from which you are appealing

2. The district court's entry of judgment

3. The district court's docket sheet

2. *What are the facts of your case*

Appellant filed Complaint No. C 97-2796 CW on July 30, 1997, against Marilyn Hall Patel (appellee) citing abuse of legal process; ruling with want of jurisdiction and for violation of Constitutional due process of law. Appellee failed to answer the Complaint or respond in any manner but chose to rely on the court of Judge Claudia Wilken to dispose of the Complaint. The record will show that the only response to the Complaint was by Judge Wilken who acted as an Attorney from the Bench in defending Appellee, but also defended Appellee by disposing of Appellant's issues and motions with rulings of denial.

Lack of subject matter and personal jurisdiction Appellee Patel frivolously claimed jurisdiction under IRC 26 U.S.C. as shown in the transcripts of the hearing to wit: This proceeding is brought and this court has jurisdiction hereof under Sections 7402(b) and 7604(a) of the Internal Revenue Code (26 U.S.C. 5§ 7402 and 7604). This jurisdictional claim fails for six reasons cited below.

1. Appellee's jurisdictional claim fails by the fact that federal legislation is prohibited in the individual states except in the specific geographic areas purchased from the States, pursuant to Article I, Section 8, and Clause 17 and sustained by the 9th and 10th Amendments to the United States Constitution. These facts are also maintained by California Government Code Section 110 and 111, and none of plaintiff's person or property is within such designated federal enclave.

2. Appellee's jurisdictional claim further fails by the fact that Title 26 U.S.C., the Internal Revenue Code, is merely "prima facie" law that has never been enacted into positive law as cited in Title 1 U.S.C. Section 204(a) and identified in Sec. 204 et seq. *"United States Code Titles As Positive Law."* If construction of section of United States Code which has not been enacted into Positive law is necessary, recourse must be had to original statutes themselves. *U.S. v. Welden, Mass. 1964, 84 S.Ct. 1082, 377 U.S. 95, 12 L. Ed.2d 152.* United States Statutes at Large must be promulgated in the Federal Register pursuant to Title 44 U.S.C. 1500 et seq. for general effect. No such statutes have been produced and mere prima facie law has no authority and jurisdiction over plaintiff's private person, private property or the sovereign Republic of California. The United States Code is only a prima facie statement of the statute law, and statutes collected in it do not change their meaning nor acquire any new force by their inclusion and if construction is necessary, recourse must be had to the original statutes themselves. *Murrell v. W. U. Tel. Co., C.C.A. Fla.1947, 160 F.2d 787.*

The official source to find United States law is the Statutes at Large,and the United States Code is only prima facie evidence of such laws. *Royer's, Inc. v. U.S., Pa. 1959, 265 F.2d 615.* The court in *Young v. I. R. S. , 596 F. Supp 141 (1984)* also cited as plaintiff'5 exhibit 7, a May 7, 1981, memorandum issued by the American Law Division of the Congressional Research Service of the Library of Congress entitled: "Why Title 26 of the United States Code Has Not

Been Enacted as Positive Law." The following statements are part of this report: "The Internal Revenue Code of 1954, as amended, does not meet the criteria for enactment into positive law.' "In addition, according to the Office of Law Revision Counsel, the Internal Revenue Code in its present form does not meet the standards of consistency and conformity which have been established for titles enacted into positive law."

3. Appellee's jurisdictional claim fails again by the fact there is no administrative authority over "private Citizens" from Title 26, when the authority cited at Sections 7801 and 7805 is from the Secretary of the Treasury, who is merely an unelected political appointee of the President to an Executive Branch appointment and holds no permanent position nor legislative authority to create laws or actions affecting the general population who are not specifically employed by the Department of the Treasury. Title 31 USC, Section 301(a), b) confirms this "appointment" and Title 5 USC, at Chapter 3--*POWERS*, Section 301 defines the limited authority of the "head of an executive department." 16 Am Jur 2d S 310. Distinction between judiciary and administrative agencies. What essentially distinguishes a court from an administrative agency is that under our constitutional system of separation of the three branches of government, courts are part of the judicial, whereas administrative agencies are part of the executive branch of the government. Bradly v. Bloomfield, 85 NJL. 506, 89 A 1009 (distinguishing "court" a branch of the government vested with judicial power from ministerial agencies of every kind

the Department of the Treasury-Internal Revenue Service, which is the EXECUTIVE BRANCH of government. A summons could not properly issue or originate from the Executive branch of government that has no authority or jurisdiction over sovereign citizens in the private sector. (See Title 31 USC, Sec. 301(a), (b); 4 USC Sec. 71, 72; and 5 USC Sec. 301).

6. There are no implementing regulations for administrative summons listed in the Parallel Table of Authorities and Rules whereas Section 7602 is shown as CFR 27 Parts 170, 296 that relate specifically to Alcohol, Tobacco Products and Firearms and no implementing regulations listed for the remaining sections 6420, 6421, and 6427. One agency shall not use another's regulations as clearly stated in:

1 CFR S 21.21 General requirements: References.

(b) Each agency shall publish its own regulations in full text. Cross-references to the regulations of another agency may not be used as a substitute for publication

3. *What did you ask the district court to do (for example, award damages, give injunctive relief, order your release from prison, etc.)?*

Request Order of Default Judgment under Federal Rule of Civil Procedure 55(b) for failure to respond to complaint; or Summary judgment pursuant to Federal Rule of Civil Procedure 56(c) based on no genuine issue of material fact to base a defense. Award damages of One Million dollars; cost of suit and expenses, including reasonable attorney's fees and such other and further relief to which

Appellant is justly entitled.

In exercising its discretion in determining whether to grant a default judgment, the district court may properly consider such factors as: (1) whether the defendant's failure to plead or otherwise defend is largely technical; (2) whether the plaintiff will be prejudiced if the default judgment is not entered, and if so, to what extent; and (3) whether entry of the default judgment would result in injustice. The policy reasons for allowing default judgment5 were expressed by the D.C. Federal Court in *H.F. Livermore Corporation v. ,Aktiengesellschaft Gebruder Loepfe, 432 F.2d 689 (D.C. 1970),* where the Court stated:

> [A] Default judgment must normally be viewed as available only when the adversary process has been halted because of an essentially unresponsive party. In this instance, the diligent party must be protected lest he be faced with interminable delay and continued uncertainty as to his rights.

The general rule is **that a court cannot adjudicate a controversy on its own motion**; it can **only do so** when the controversy is **presented to it by a party**, and **only** if the case is **presented to it in the form of a proper pleading**. A court has no power either to investigate facts or initiate proceedings.

Judge Wilken admits Appellee has failed to respond to the Complaint and absent a responsive pleading Judge Wilken has no basis for determining any position in favor of Appellee and having done so, violates statutory law.

(III) Judicial immunity

Appellee made no claim for judicial immunity, which is obvious by her failure to respond or answer the complaint, but even if she had made the claim, it could not hold because she acted without the required jurisdiction, thereby violating Constitutional rights, and the Supreme Court has decided and ruled that government officials CAN NOT escape liability for their actions in violating statutory and constitutional provisions of law, to wit:

> "Where an official could be expected to know that certain conduct would violate statutory or constitutional rights he (she) should be made to hesitate; and a person who suffers injury caused by such conduct may have a cause of action." *Pierson v. Ray, 386 U.S. 547, 554 (1967).*

Officers of the court have no immunity from liability when violating a constitutional right and may be held personally liable for damages under 42 U.S.C.A. 1983 for they are deemed to know the law. Knowing that they will be liable for all injurious conduct

4. *State the claim or claims you raised at the district court*

(I) Violation of the Constitution under Color of Office

(II) Lack of subject matter and personal jurisdiction

(III) Abuse of legal process

5. *What issues are you raising on appeal?*

(I) VIOLATIONS OF THE CONSTITUTION

Judge Wilken's dismissal of Appellant's Complaint denied the Appellant the Constitutional right to due process. The court's rulings on Service of the Complaint and judicial immunity are issues required to be raised by the defendant uader F.R.C.P Rule 8, and the court's arguments are points to be raised by the defendant in response to the Complaint, but to present such arguments from the beach is clearly a Constitutional violation of due process and equal protection of the law under the 14th Amendment.

(II) STATUTORY VIOLATION

Judge Wilken's acted as an "Attorney from the Bench" by responding to the Appellant's Complaint in support of Appellee and is a violation of Title 28 Sec. 454. *Practice of law by justices and judges.* Any justice or judge appointed under the authority of the United States who engages in the practice of law is, guilty of a high misdemeanor.

And, Judge Wilken had no power to either investigate facts or to initiate proceedings.

20 Am Jur 2d Sec. 20. Jurisdiction as dependent on application for relief. creates incentives for officials to err on the side of protecting citizens constitutionally protected rights. When they violate the constitutionally protected rights, they do so at their own peril. *Owen v. Independence, 100 S.Ct:. 1398, 1980 (445 U.S. 622 L.Ed.-?d 673); Maine v. Thiboutot, 1980, 100 S.Ct. 2502,*

448 U.S. 1, 65 L.Ed. 2d 555, Removes judicial immunity; *Hafer v. Melo, 502 U.S. 21, 1991.*

In Harlow v. Fitzgerld, Supreme Court Justice Blackmun stated, "I agree with the substantive standard announced by the Court today, imposing liability when a public-official defendant, knew or should have known, of the Constitutionally violate effect of his actions. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions, even if he could not 'reasonably have been expected' to know what he actually did know. Thus the cleaver and unusually well-informed violator of Constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies 'across the board', to all 'government officials' performing discretionary functions."

"JUDGE MADE LAW" FAILS TO PROVIDE IMMUNITY

Judge Wilken's presentation of judicial immunity has no merit as it is not based on legislative enacted statutory law. Her argument for judicial immunity is based on "judge made" case law which is a violation of the Constitution under the separation of power as supported by 16 Am Jur 2d Sec. 318 "...there can be no legislation by the courts or the executive branch of government."

Clearly, Judge Wilken has failed to refer to a statute to support her position for immunity but instead is relying solely on judicial case law.

NO JURISDICTION-NO IMMUNITY

Appellee could only have had jurisdiction in this matter through the issuance of a complaint, and she admits that no complaint was filed (See: Complaint C 97-2796 CW Exhibit C page 3, line 14-15). The courts jurisdiction was challenged but Appellee failed to prove jurisdiction was authorized through a legislative enacted statute.

"Where jurisdiction is challenged it must be proven." *Hagans v. Lavine, 415 U.S. 533.*

Judge Patel's reliance on Title 26 U.S.C. for jurisdiction requirements is misguided and her statement "Title 26 of the United States Code was indeed enacted into law and provides this court with subject matter jurisdiction ... "(See:Complaint C 97-2796 CW. Exhibit A, page 2, lines 23-26) is a totally erroneous statement not supported by facts. The FACT that Title 26 has not been enacted into positive law is proven by Title 1 Sec. 204(a) and submitted exhibits of the Preface Pages of the United States Code (See: Complaint C 97-2796 CW Exhibits E & F)and this fact is further supported by the most recent Congressional Research Service Report for Congress titled "Frequently Asked Questions Concerning the Federal Income Tax", dated December 5, 1996, page 9, paragraph 6, states, "Title 26, Internal Revenue, has not been enacted into positive law."

Judge Wilken erred in dismissing Appellant's Complaint by making a determination of immunity for Appellee because even had Appellee responded

to the Complaint, she had no jurisdiction.

A judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Mireles, 502 U.S. at 11; Stump, 435 U.S. at 356; Ashelman, 793 F.2d at 1075.

(IV) Abuse of legal process

Judge Wilkin in her **ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT** filed November 3, 1997, page 1, line 17-20 stated: "This matter will be decided on the papers that have been submitted. Having considered all of the papers filed by the parties, the Court denies the motion." The word "parties", as plural, could only mean the plaintiff AND JUDGE WILKIN, who acted as an attorney from the bench, since judge Wilkin acknowledged in the same paragraph that "Defendant has filed no opposition." Likewise, Wilkin's order stating: "Having considered all of the papers filed by the parties," raises the question of WHAT PAPERS? The only evidence of record is papers filed by the plaintiff, since she acknowledged that "Defendant has filed no opposition." Proof positive of Wilkins operating as an attorney from the bench is found when Wilkin filed her ORDER, with a five page argument supporting Appellee, while admitting 'Defendant has filed no opposition."

(V) All Appellant's claims listed in the Complaint are admitted as being true in accordance to F.R.C.P. 8(d).

Federal Rules of Civil Procedure Rule 8(b) Defenses; *Form of Denials*. A party shall state in short and plain terms the party's defenses to each claim asserted

and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of the averment, the party shall so state and this has the effect of a denial.

Federal Rules of Civil Procedure Rule 8(d) *Effect of Failure to Deny Averments.* In a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

6. *Did you present all these issues to the district court?*

NO (Yes/No) If not, why?

Court decided case without defendant answering and/or rebutting complaint and appellant was not given opportunity to appear. Appellant requested an entry of default, that Judge Wilkin denied, filed a Motion for Default, Notice of Motion for Default, and an Order for Default, which were also denied.
Appellant filed a Motion for Leave to file a Motion for Reconsideration on December 11, 1997, where the F.R.C.P. Rule 8(b) and 8(d) would have been presented, but the court denied the Motion which prevented the presentation of these rules.

7. *What law supports these issues on appeal?* (You may, but need not, refer to cases and statutes.)

(I) Constitutional right for *redress of grievances.*

Appellant's rights under the First Amendments to the Constitution have been

denied. Appellant has been denied the right to equal protection under the law; the right to substantive and procedural due process under the Fifth Amendment.

(II) Lack Of subject matter and personal jurisdiction There is no subject matter jurisdiction without a summons and complaint under Rule 4(a) of the Federal Rules of Civil Procedure. The ultimate source of subject matter jurisdiction is the Constitution itself, where Article 3, Sec. 2, lists its outer limits as follows:

ARTICLE III

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States,...

PERSONAL JURISDICTION

The rule that governs the summons governs the whole topic of jurisdiction of the person, which is the principle of civil procedure. Rule 4 regulates personal jurisdiction single-handedly and subdivision (a) governs the issuance of the summons, which the clerk issues in federal practice.

It takes an Act of Congress (a statute) to actually confer the jurisdiction on a district court, and the presence of subject matter jurisdiction, usually with a citation of the jurisdiction-conferring statute, must be demonstrated by the plaintiff in every case.

There must be a "process" by any paper whereby a person is subjected to a courts jurisdiction or otherwise made to comply with its demands.

8. *Do you have any other cases pending in this court? If so, give the name and docket number of each case. NONE*

9. *Have you filed any previous cases which have been decided by this court?* If so, give the name and docket number of each case.

Sherwood v. United States No. 97-15034

10. *For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?* N/A

Dated: April 6, 1998

signed RAYMOND B. SHERWOOD

1612 Merian Dr.

Pleasant Hill, Calif. 94523

U.S. District Court TERMED APPEAL

U.S. District for the Northern District of California (Oakland)

CIVIL DOCKET FOR CASE #: 97-CV-2796

Sherwood, et al v. Patel Filed: 07/30/97

Assigned to: Judge Claudia Wilken Jury demand: Plaintiff

Demand: $0,000 Nature of Suit: 890

Lead Docket: None Jurisdiction: Federal Question

Dkt # in other court: None

Cause: 28:1331 Fed. Question

RAYMOND BAILEY SHERWOOD	Raymond Bailey Sherwood
Plaintiff	(COR LD NTC) [PRO SE]
MARILYN HALL PATEL, Chief	1612 Merian Dr.
Judge	Pleasant Hill, CA 94523
Defendant	510-827-2604

Proceedings include all events

4:97cv2796 1 Sherwood, et al v. Patel Termed Appeal

7/30/97 1 COMPLAINT yes Summons (es) issued; Fee status pd entered on 7/30/97 in the amount of $ 150.00 (Receipt No.43405); jury demand [4 : 97-cv-02796] (db)

7/30/97 3 NOTICE OF FILING of Verification, by Plaintiff Raymond Bailey Sherman (Sherwood) [4 : 97-cv-02796] (db)

7/30/97 2 ORDER SETTING CASE MANAGEMENT CONFERENCE by Judge Claudia W'Liken : initial case management conference will be held 10:30 10/31/97 . (cc: all counsel) (cp)[Entry date 08/04//971

10/3/97 4 RETURN OF SERVICE executed upon defendant Marilyn Hall Patel on 8/1/97 [4:97-cv-027961 (cp) [Entry date 10/06/97]

10/3/97 5 MOTION by Plaintiff Raymond Bailey Sherwood for entry of default as to Marilyn Hall Patel [4:97-cv-02796] (cp) [Entry date 10/06/97]

10/3/97 6 NOTICE OF MOTION AND MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood for judgment by default with Notice set for 11/7/97 at 10:00am [4:97-cv-02796] (cp) [Entry date 10/06/971

10/3/97 7 DECLARATION by Raymond Bailey Sherwood on behalf of Plaintiff re motion for judgment by default [6-11 [4:97-cv-027961 (cp) [Entry date 10/06/971

10/3/97 8 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [7-11, motion for judgment by default [6-11, motion for entry of default as to Marilyn Hall Patel [5-1] (4:97-cv-027961 (cp) [Entry date 10/06/971

10/20/97 9 CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed by plaintiff. [4:97-cv-027961 (cp) [Entry date 10/28/971

10/31/97 10 ORDER by Judge Claudia Wilken Case Management Conference reset for 1:30 1/9/98 ( ) (cc: all counsel) [4:97-cv-027961 (kk) [Entry date 11/01/971

11/3/97 11 ORDER by Judge Claudia Wilken denying motion for judgment by default [6-11, denying motion for entry of default as to Marilyn Hall Patel [5-11 (Date Entered: 11/6/97) (cc: all counsel) [4:97-cv-027961 (cp) [Entry date 11/06/97]

11/12/97 12 NOTICE by Plaintiff Raymond Bailey Sherwood of motion to vacate order denying motion for default judgment [4:97-cv-027961 (cp) [Entry date 11/14/971

11/12/97 13 MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood to vacate order denying motion for default judgment with Notice set for 12/12/97 at 10:00am [4:97-cv-027961 (cp) [Entry date 11/14/97]

11/12/97 14 DECLARATION by Raymond Bailey on behalf of PlaintiffF re motion to vacate order denying motion for default judgment [13—I-) [4:97-cv-02796] (cp) [Entry date 11/14/97]

11/12/97 15 NOTICE by Plaintiff of motion to vacate order continuing case management conference [4:97-cv-027961 (cp) [Entry date 11/14/971

11/12/97 16 MOTION before Judge Claudia Wilken by Plaintiff to vacate continuing case management conference with Notice set for 12/12/97 at 10:00am [4:97-cv-027961 (cp) [Entry date 11/14/97]

11/12/97 17 DECLARATION by Raymond Bailey on behalf of Plaintiff re motion to vacate continuing case management conference [16-1] [4:97-cv-02796] (cp) [Entry date 11/14/97]

11/12/97.....18 PROOF OF SERVICE by Plaintiff of declaration [17-11, motion to vacate continuing case management conference [16-11], notice [15-1] , declaration [14-1], motion to vacate order denying motion for default judgment [13-1], notice [12-1] [4:97-cv-027961 (c-c) [Entry date 11/14/97]

11/13/97 19 AMENDED NOTICE of hearing by Plaintiff Raymond Bailey Sherwood setting motion to vacate continuing case management conference [16-1]; hearing set for 10:00 12/19/97 [4:97-cv-02796] (cp) [Entry date 11/17/97]

11/13/97 20 AMENDED NOTICE of hearing by Plaintiff Raymond Bailey Sherwood setting motion to vacate order denying motion for default judgment [13-1]; hearing set for 10:00 12/19/97 [4:97-cv-027961 (cp) [Entry date 11/17/97]

11/13/97 21 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of motion notice [20-1], motion notice [19-1] [4:97-cv-02796] (cp) [Entry date 11/17/971

11/25/97 22 ORDER by Judge Claudia Wilken denying motion to vacate continuing case management conference [16-1], denying motion to vacate order denying motion for default judgment (13-1) VACATING hearing set for 12/19/97 (Date Entered: 12/l/97) (cc: all counsel) [4:97-cv-027961 (cp) [Entry date 12/01/97]

12/1/97 23 MOTION and declaration by Plaintiff Raymond Bailey Sherwood for entry of default as to Marilyn Hall Patel [4:97-cv-02796] (cp) [Entry date 12/03/97]

12 /1/ 97 – RECEIVED resubmitted entry of default submitted by Plaintiff Raymond Bailey Sherwood [4:97-cv-02796] (cp) [Entry date 12/03/97]

12/'l/'97 24 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of document received [0-01 motion for entry of default as to Marilyn Hall Patel [23-l] [4:97-cv-02796] (cp) [Entry date 12//03//971

12/1//97 – DEFAULT DECLINED as to defendant Marilyn Hall Patel (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 12/03/97]

12/10/97 25 COPY OF LETTER dated 12/8/97 from Raymond Bailey Sherwood to Susan L. Kamlet re: service [4:97-cv-02796] (cp) (Entry date 12/11/97)

12/11/97 26 NOTICE by Plaintiff Raymond Bailey Sherwood of motion for leave to file a motion for reconsideration [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 27 MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood for leave to file a motion for reconsideration with Notice set for 1/16/98 at 10:00am [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 28 DECLARATION by Raymond Bailey (Sherwood) on behalf of Plaintiff re motion for leave to file a motion for reconsideration [27-1] [4:97-cv-027961 (cp) [Entry date 12/12/97]

12/11/97 29 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [28-11, motion for leave to file a motion for reconsideration [27-1], notice [26-1] [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 30 RETURN OF SERVICE executed upon U.S. Dept. of Justice on 12/9/97 [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 31 RETURN OF SERVICE executed upon Attorney General Janet Reno on 12/9/97 [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/18/97 32 ORDER by Judge Claudia Wilken denying motion for leave to file a motion for reconsideration [27-1] hearing set for 1/16/98 is vacated (Date Entered: 12/23/97) (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 12/23/97]

12/22/97 33 RETURN OF SERVICE executed on 12/15/97 upon Atty. General, Janet Reno [4:97-cv-02796] (cp) [Entry date 12/30/97]

12/22/97 34 RETURN OF SERVICE executed on 12/10/97 upon U.S. Atty. [4:97-cv-027961 (cp) [Entry date 12/30/97]

12/22/97 35 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of subpoena [4:97-cv-02796] (cp) [Entry date 12/30/97]

1/5/98 36 CERTIFICATE by Plaintiff Raymond Bailey Sherwood of non-compliance [4:97-cv-02796] (cp) [Entry date 01/06/98]

1/9/98 37 MINUTES: (C/R Rosita- Flores) (Hearing Date: 1/9/98) case management conference held; no apperance by plaintiff [4:97-cv-02796] (cp) [Entry date 01/16/98]

1/16/98 38 ORDER by Judge Claudia Wilken dismissing case for failure to prosecute ; appeal filing ddl 3/17/98 (Date Entered: 1/16/98) (cc: all counsel) [4:97-cv-02796] (cp)

1/26/98 39 OBJECTIONS by Plaintiff Raymond Bailey Sherwood to order [38-2] [4:97-cv-02796] (cp) [Entry date 01/27/98]

1/26/98 40 DECLARATION by Raymond Bailey on behalf of Plaintiff Raymond Bailey Sherwood re objection [39-1] [4:97-cv-027961 (cp) [Entry date 01/27/98]

1/26/98 41 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [40-1], objection [39-1] [4:97-cv-027961 (cp) [Entry date 01/27/98]

3/10/98 42 ORDER by Judge Claudia Wilken that the court overrules plaintiff's objection to the court's order of dismissal and reaffirms dismissal of this case; no more filings shall be received in this closed docket (Date Entered: 3/13/98) (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 03/13/98]

3/20/98 43 NOTICE OF APPEAL by Plaintiff Raymond Bailey Sherwood from District Court decision order [42-1] Fee status paid, receipt #804671 [4:97-cv-02796] (cp)

3/20/98 44 TRANSCRIPT DESIGNATION and Ordering Form filed by Plaintiff Raymond Bailey Sherwood for dates NOT ORDERING TRANSCRIPT C/R: ; appeal [43-1] [4:97-cv-02796] (cp)

3/20/98 -- Docket fee notification form and case information sheet to USCA [43-1] [4:97-cv-02796] (cp)

3/20/98 -- Copy of notice of appeal and docket sheet to all counsel [4:97-cv-02796] (cp)

3/20/98 -- CERTIFICATE of Record mailed to USCA, counsel notified. [4:97-cv-02796] (cp)

Docket as of March 20, 1998 11:46 am

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 97-02796 CW

RAYMOND BAILEY SHERWOOD,

Plaintiff,

v.

MARILYN HALL PATEL.

Defendant.

/

ORDER REAFFIRMING DISMISSAL OF CASE

Plaintiff objects to the Court's Order of Dismissal entered on January 18, 1998 and requests that it be set aside. In that Order the Court dismissed this case for failure to prosecute when Plaintiff failed to attend the Case Management Conference held on January 9, 1998. Plaintiff states that he did not attend the January 9 Case Management Conference because he had received a telephone message from the Court advising him that it had been rescheduled to January 16, 1998. Plaintiff states that he subsequently received written notice from the Court vacating the Case Management Conference scheduled for January 16.

Plaintiff is incorrect. However, even if he were correct, this case was properly dismissed. As explained in the Court's Order Denying Plaintiff's Motion for Default Judgment, Defendant Judge Marilyn Hall Patel is protected from lawsuits by absolute judicial immunity. Moore V. 1 96 F-3d 1240, 1243 (9th Clr.

1996), cert. denied, 117 S. Ct. 963 (1997). Judicial immunity applies even when the judge acts erroneously, or in excess of judicial authority or the act is injurious to the plaintiff. Id. at 1244.

Plaintiff continues to contend that he is suing Judge Patel in her individual capacity, not in her official capacity as a judge. However, as explained in the Order Denying Plaintiff's Motion for Default Judgment, Judge Patel was acting in her official capacity as a judge when she issued the order to show cause which is the subject of Plaintiff's complaint. Judge Patel is immune from Plaintiff's civil suit for damages because it is based upon her judicial actions.

Because Plaintiff has failed to state a justiciable claim against Judge Patel, this case was properly dismissed.

CONCLUSION

For the foregoing reasons, the Court overrules Plaintiff's objection to the Court's Order of Dismissal and reaffirms dismissal of this case. The clerk shall close the file and no more filings shall be received in this closed docket.

IT IS SO ORDERED.

Dated: MAR 10 1998

signed CLAUDIA WILKEN

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND BAILEY, SHERWOOD

Plaintiff,

v.

MARILYN HALL PATEL, Judge

Defendant.

_____/

No. C 97-02796 CW

ORDER OF DISMISSAL

On October 31, 1997, the Court issued an Order Continuing Case Management Conference wherein the Case Management Conference, previously set for October 31, 1997, was continued to January 9, 1998, at 1:30 p.m. On January 9, 1998, a Case Management Conference was held. Sue Kamlet, Assistant U. S. Attorney, specially appeared on behalf of the Defendant. No appearance was made by or on behalf of the Plaintiff. Accordingly,

IT IS HEREBY ORDERED that the above-captioned action is DISMISSED for failure to prosecute.

Dated: JAN 13 1998

signed: CLAUDIA WILKEN

United States District Juidge

A-31 cont.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH DISTRICT

RAYMOND BAILEY SHERWOOD, No. 98-15496

Plaintiff-Appellant, D.C. No. CV-97-02796CW

V.

MARILYN HALL PATEL, MEMORANDUM

Defendant-Appellee.

_____/

Appeal from the United States District Court

For the Northern Division of California

Claudia Wilken, District Judge, Presiding

Submitted July 20, 1998

Before: HUG, Chief Judge, SCHROEDER and KOZINSKI, Circuit Judges.

Raymond Bailey Sherwood appeals pro se the district court's order reaffirming its dismissal of his action against District Court Judge Patel. Sherwood seeks damages arising when Judge Patel issued an order to show cause in an action involving Sherwood and the Internal Revenue Service. We agree with the district court, thjat Judge Patel was entitled to judicial immunity because she was acting within her official capacity as a judge when she issued the order. See Moore v. Brewster, 96 F.3d 1240, 1243-44 (9th Cir. 1996).

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 98-15496

CT / AG# CV-97-02796-CW

RAYMOND BAILEY SHERWOOD

Plaintiff - Appellant

v.

MARILYN HALL PATEL, Chief Judge

Defendant- Appellee

APPEAL FROM the United States District Court for the Northern Division of California (Oakland) .

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern Division of California (Oakland) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFRIMED.

Filed and entered July 24, 1998

UNITED STATES COURT OFAPPEALS

FOR THE NINTH CIRCUIT

Raymond Bailey Sherwood — No. 98-15496

Plaintiff-Appellant — D.C. No. CV 97 02796 CW

v.

Marilyn Hall Patel,

Defendant-Appallee.

_____/

PURPOSE

Appellant respectfully submits this PETITION FOR REHEARING under FRAP 40,Mthin the allotted 45 days from entry of judgment dated July 24, 1998. This PETITION is based upon material points of fact and law overlooked in the decision and an apparent conflict with another decision of the Court which was not addressed in the opinion.

INTRODUCTION

Federal District Court Judge Marilyn Hall Patel issued a Court Order based upon an Administrative Summons that was not supported by enacted legislative statutes which leaves Judge Patel without any authority for issuing such Order. Judge Patel could establish jurisdiction if a Complaint had been filed in this matter but Judge Patel acknowledged that no complaint had been filed and

therefore Judge Patel could have no jurisdiction in the matter. Appellant filed an action in District Court to resolve the issue but Judge Patel failed to respond to the Complaint and relied upon District Court Judge Wilkens, to act as an Attorney from the Bench to base a defense of Judicial immunity.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

95 Seventh Street, P. 0. Box 193939

San Francisco, CA 94119-3939

August 18, 1998

TO: Raymond Bailey Sherwood

FROM: Cathy A. Catterson, Clerk

By: Marian Foreman, Deputy Clerk

SUBJECT: Defective Petition for Rehearing

RE: CA NO. 98-15496 Sherwood v. Patel

A petition for rehearing in the referenced case was received on AUGUST 17, 1998 and could not be filed for the following reason(s):

( ) The petition was received late. A motion for leave to file it late must be submitted.

(X) The petition was received late and the mandate has been issued. A motion to recall the mandate must be submitted.

( ) An insufficient number of copies of the petition were received. Please submit an additional _____copies immediately and the petition will be filed.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Raymond Bailey Sherwood No. 98 15496

Plaintiff-Appellant

MOTION TO RECALL MANDATE

v.

Marilyn Hall Patel

Defendant-Appallee'

_____/

Appellant submits this MOTION TO RECALL MANDATE based upon the following facts; The Court Issued an Entry of Judgment dated July 24, 1998 and the notice in the Entry of Judgment indicates that when the United States or an Officer or Agent is involved 45 days are allotted to file for a Petition for Rehearing. The defendant is United States Federal District Judge Marilyn Hall Patel which clearly qualifies the 41day time frame and allows up to a date of September 7, 1998 for filing a petition. Appellant filed within that time period (filed August 17, 1998) thereby complying with the requirements for filing a PETITION FOR REHEARING. Appellant respectfully requests the Court to grant Appellant's Motion and Recall the Mandate.

Respectfully Submitted,

Signed RAYMOND B. SHERWOOD Dated August 25, 1998

UNITED STATES COURT OF APPEALS

FOR THE NINTH- CIRCUIT

RAYIMOND BAILEY SHERWOOD

Plaintiff – Appellant

V.

MARILYN HALL PATEL, Chief Judge

Defendant - Appellee

USCA NO.: 98-15496

DC#: CV-97-02796-CW

The mandate in this appeal filed on August 17, 1998 was issued

Prematurely and is hereby recalled.

FOR THE COURT:

Cathy A. Catterson

Clerk of Court

By:signed MARIAN FOREMAN

Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Raymond B. Sherwood

Appellant / Petitioner

CASE NO. 98-15496

v.

Marilyn Hall Patel

Appellee / Respondent

APPELLANT'S MOTION FOR SUMMARY DISPOSITION

Introduction

The appellant, Raymond B. Sherwood, hereby moves for summary disposition as defined in Circuit Rule 3-6 (b).

The appellant has filed an informal brief in the above-captioned appeal from the district court's March 10, 1998 Order Reaffirming Dismisal of Case. Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Circuit Rule 3-6, the appellant moves for summary disposition in appellant's favor. Summary disposition is proper because it is 'clearly ascertainable" from a review of the record that the appellee has failed to respond to this appeal.

Factual and Procedural Back-ground

Appellant filed a Complaint on July 30, 1997, in Federal District Court, Case No. C 97-2796 CW, against Federal Judge Marilyn Hall Patel, citing abuse of legal process; ruling with want of jurisdiction and for violation of Constitutional due

process of law. The record will show that Judge Patel failed to answer the Complaint or respond in any manner. The record will also show that the only response to the Complaint was made by Judge Claudia Wilken who acted as an Attorney from the Bench in defending Judge Patel by countering appellant's arguments and disposing of appellant's issues and motions with rulings of denial.

The Appeal's Court Time Schedule Order filed Mar. 24, 1998 required the appellant to file his brief by 5/4/98. FRAP 31 (a) states, the appellee shall serve and file a brief within 30 days after service of the brief of the appellant." Appellant's Opening Brief was filed April 6, 1998, but, regardless of which date the 30 day reply requirement applies, the FACT is, no response or reply has been made by the appellee to this appeal.

Discussion

Judge Patel in her capacity as a Federal Judge has to have knowledge that she is required by the Federal Rules of Civil Procedure where Rule 8(b) addresses Defenses: Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of the averment, the party shall so state and this has the effect of a denial.

There is no evidence in the record that Judge Patel offered any defense, either personally or by Counsel, to the averments listed in the appellant's Complaint.

FRCP Rule 8(d) addresses Effect of Failure to Denv. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments In a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

If Judge Patel was entitled to judicial immunity in this instance she would, by the requirements of Rule 8 FRCP, be mandated to respond to the Complaint with a judicial immunity defense, and by failing to respond to the Complaint Judge Patel has admitted she abused the legal process; ruled with want of jurisdiction and violated Constitutional due process.

Conclusion

Judge Patel has continued her pattern of non-response in the appeal process and with her failure to respond comes the justification for the Circuit Court to grant the appellants Motion for Summary Disposition.

Respectfully submitted,

Signed RAYMOND B. SHERWOOD Dated: November 30, 1998

1612 Merian Drive

Pleasant Hill, Calif. 94523

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND BAILEY SHERWOOD, No. 98-15496

Plaintiff-Appellant,

DC # CV-97-02796-CW

v. Northern California (Oakland)

MARILYN HALL PATEL, Chief Judge, ORDER

Defendant-Appellee.

_____/

Before Chief Judge Hug, Schroeder, Kozinski, Circuit Judges

The petition for rehearing is denied.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Raymond B- Sherwood — NO- 98--15496

Plaintiff -Appellant, — D.C. No. CV-97-02796-CW

v. — MOTION TO RECALL MANDATE SUGGESTION FOR REHEARING EN BANC

Marilyn Hall Patel,

Defendant – Appellee

_____/

Appellant submits this MOTION TO RECALL MANDATE under FRCP Rule 27, and plaintiff makes a SUGGESTION FOR REHEARING-EN BANC based upon FRAP Rule 35, Circuit Rule 35 because the proceeding involves a question of exceptional importance and appears to be a matter of first Impression."

Background

District Court Judge Marilyn Hall Patel very well may be entitled to judicial immunity because she was acting within her official capacity as a judge when she issued the order. However, judicial immunity does not recuse a federal judge from responding to a Complaint nor does judicial immunity recuse a federal judge from responding to an Appeal and the court record, as indicated by the Court Docket, clearly establishes the fact that federal judge Marilyn Hall Patel failed to respond in an manner to either the Complaint or the Appeal.

Discussion

The Federal Rules of Civil Procedure require a defensive response to a complaint.

Rule 8(b) Defenses; Form of Denials.

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of the averment, the party shall so state and this has the effect of a denial.

Judge Patel is required by Rule 8(b) to respond to appellant's Complaint and in this instance a claim of judicial immunity may have held. However, because Judge Patel failed to respond to the Complaint she has admitted she acted without jurisdiction by failing to deny appellant's claim in a responsive pleading, as found in FRCP Rule 8(d) and Rule 10(b).

Rule 8(d) Effect of Failure to Deny.

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Rule 10(b) Each claim founded upon a separate transaction or occurrence and each defense, other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

Conclusion

Article 3 Section 1 of the United States Constitution mandates judges to hold their office in good behavior and affords no special privileges to avoid requirements of law. Appellant respectfully requests the Court to find federal judge Marilyn Hall Patel to be without judicial immunity based upon her failure to make a judicial immunity claim and uphold appellant's cause.

Respectfully submitted,

Signed RAYMOND B. SHERWOOD

Dated: December 29, 1998

U.S. District Court TERMED APPEAL

U.S. District for the Northern District of California (Oakland)

CIVIL DOCKET FOR CASE #: 97-CV-2796

Sherwood, et al v. Patel Filed: 07/30/97

Assigned to: Judge Claudia Wilken Jury demand: Plaintiff

Demand: $0,000 Nature of Suit: 890

Lead Docket: None Jurisdiction: Federal Question

Dkt # in other court: None

Cause: 28:1331 Fed. Question

RAYMOND BAILEY SHERWOOD	Raymond Bailey Sherwood
Plaintiff	(COR LD NTC) [PRO SE]
MARILYN HALL PATEL, Chief	1612 Merian Dr.
Judge	Pleasant Hill, CA 94523
Defendant	510-827-2604

Proceedings include all events

4:97cv2796 1 Sherwood, et al v. Patel Termed Appeal

7/30/97 1 COMPLAINT yes Summons (es) issued; Fee status pd entered on 7/30/97 in the amount of $ 150.00 (Receipt No.43405); jury demand [4 : 97-cv-02796] (db)

7/30/97 3 NOTICE OF FILING of Verification, by Plaintiff Raymond Bailey Sherman (Sherwood) [4 : 97-cv-02796] (db)

7/30/97 2 ORDER SETTING CASE MANAGEMENT CONFERENCE by Judge Claudia W'Liken : initial case management conference will be held 10:30 10/31/97 . (cc: all counsel) (cp)[Entry date 08/04//971

10/3/97 4 RETURN OF SERVICE executed upon defendant Marilyn Hall Patel on 8/1/97 [4:97-cv-027961 (cp) [Entry date 10/06/97]

10/3/97 5 MOTION by Plaintiff Raymond Bailey Sherwood for entry of default as to Marilyn Hall Patel [4:97-cv-02796] (cp) [Entry date 10/06/97]

10/3/97 6 NOTICE OF MOTION AND MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood for judgment by default with Notice set for 11/7/97 at 10:00am [4:97-cv-02796] (cp) [Entry date 10/06/971

10/3/97 7 DECLARATION by Raymond Bailey Sherwood on behalf of Plaintiff re motion for judgment by default [6-11 [4:97-cv-027961 (cp) [Entry date 10/06/971

10/3/97 8 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [7-11, motion for judgment by default [6-11, motion for entry of default as to Marilyn Hall Patel [5-1] (4:97-cv-027961 (cp) [Entry date 10/06/971

10/20/97 9 CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed by plaintiff. [4:97-cv-027961 (cp) [Entry date 10/28/971

10/31/97 10 ORDER by Judge Claudia Wilken Case Management Conference reset for 1:30 1/9/98 ( ) (cc: all counsel) [4:97-cv-027961 (kk) [Entry date 11/01/971

11/3/97 11 ORDER by Judge Claudia Wilken denying motion for judgment by default [6-11, denying motion for entry of default as to Marilyn Hall Patel [5-11 (Date Entered: 11/6/97) (cc: all counsel) [4:97-cv-027961 (cp) [Entry date 11/06/97]

11/12/97 12 NOTICE by Plaintiff Raymond Bailey Sherwood of motion to vacate order denying motion for default judgment [4:97-cv-027961 (cp) [Entry date 11/14/971

11/12/97 13 MOTION before Judge Claudia Wilken by Plaintiff Raymond Bailey Sherwood to vacate order denying motion for default judgment with Notice set for 12/12/97 at 10:00am [4:97-cv-027961 (cp) [Entry date 11/14/97]

11/12/97 14 DECLARATION by Raymond Bailey on behalf of PlaintiffF re motion to vacate order denying motion for default judgment [13--l-) [4:97-cv-02796] (cp) [Entry date 11/14/97]

11/12/97 15 NOTICE by Plaintiff of motion to vacate order continuing case management conference [4:97-cv-027961 (cp) [Entry date 11/14/971

11/12/97 16 MOTION before Judge Claudia Wilken by Plaintiff to vacate continuing case management conference with Notice set for 12/12/97 at 10:00am [4:97-cv-027961 (cp) [Entry date 11/14/97]

11/12/97 17 DECLARATION by Raymond Bailey on behalf of Plaintiff re motion to vacate continuing case management conference [16-1] [4:97-cv-02796] (cp) [Entry date 11/14/97]

11/12/97.....18 PROOF OF SERVICE by Plaintiff of declaration [17-11, motion to vacate continuing case management conference [16-11], notice [15-1] , declaration [14-1], motion to vacate order denying motion for default judgment [13-1], notice [12-1] [4:97-cv-027961 (c-c) [Entry date 11/14/97]

11/13/97 19 AMENDED NOTICE of hearing by Plaintiff Raymond Bailey Sherwood setting motion to vacate continuing case management conference [16-1]; hearing set for 10:00 12/19/97 [4:97-cv-02796] (cp) [Entry date 11/17/97]

11/13/97 20 AMENDED NOTICE of hearing by Plaintiff Raymond Bailey Sherwood setting motion to vacate order denying motion for default judgment [13-1]; hearing set for 10:00 12/19/97 [4:97-cv-027961 (cp) [Entry date 11/17/97]

11/13/97 21 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of motion notice [20-1], motion notice [19-1] [4:97-cv-02796] (cp) [Entry date 11/17/971

11/25/97 22 ORDER by Judge Claudia Wilken denying motion to vacate continuing case management conference [16-1], denying motion to vacate order denying motion for default judgment (13-1) VACATING hearing set for 12/19/97 (Date Entered: 12/l/97) (cc: all counsel) [4:97-cv-027961 (cp) [Entry date 12/01/97]

12/1/97 23 MOTION and declaration by Plaintiff Raymond Bailey Sherwood for entry of default as to Marilyn Hall Patel [4:97-cv-02796] (cp) [Entry date 12/03/97]

12 /1/ 97 – RECEIVED resubmitted entry of default submitted by Plaintiff Raymond Bailey Sherwood [4:97-cv-02796] (cp) [Entry date 12/03/97]

12/'l/'97 24 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of document received [0-01 motion for entry of default as to Marilyn Hall Patel [23-l] [4:97-cv-02796] (cp) [Entry date 12//03//971

12/1//97 – DEFAULT DECLINED as to defendant Marilyn Hall Patel (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 12/03/97]

12/10/97 25 COPY OF LETTER dated 12/8/97 from Raymond Bailey Sherwood to Susan L. Kamlet re: service [4:97-cv-02796] (cp) (Entry date 12/11/97)

12/11/97 26 NOTICE by Plaintiff Raymond Bailey Sherwood of motion for leave to file a motion for reconsideration [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 27 MOTION before Judge Claudia Wilken by Plaintiff Raymond Bai'ey Sherwood for leave to file a motion for reconsideration with Notice set for 1/16/98 at 10:00am [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 28 DECLARATION by Raymond Bailey (Sherwood) on behalf of Plaintiff re motion for leave to file a motion for reconsideration [27-1] [4:97-cv-027961 (cp) [Entry date 12/12/97]

12/11/97 29 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [28-11, motion for leave to file a motion for reconsideration [27-1], notice [26-1] [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 30 RETURN OF SERVICE executed upon U.S. Dept. of Justice on 12/9/97 [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/11/97 31 RETURN OF SERVICE executed upon Attorney General Janet Reno on 12/9/97 [4:97-cv-02796] (cp) [Entry date 12/12/97]

12/18/97 32 ORDER by Judge Claudia Wilken denying motion for leave to file a motion for reconsideration [27-1] hearing set for 1/16/98 is vacated (Date Entered: 12/23/97) (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 12/23/97]

12/22/97 33 RETURN OF SERVICE executed on 12/15/97 upon Atty. General, Janet Reno [4:97-cv-02796] (cp) [Entry date 12/30/97]

12/22/97 34 RETURN OF SERVICE executed on 12/10/97 upon U.S. Atty. [4:97-cv-027961 (cp) [Entry date 12/30/97]

12/22/97 35 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of subpoena [4:97-cv-02796] (cp) [Entry date 12/30/97]

1/5/98 36 CERTIFICATE by Plaintiff Raymond Bailey Sherwood of non-compliance [4:97-cv-02796] (cp) [Entry date 01/06/98]

1/9/98 37 MINUTES: (C/R Rosita- Flores) (Hearing Date: 1/9/98) case management conference held; no apperance by plaintiff [4:97-cv-02796] (cp) [Entry date 01/16/98]

1/16/98 38 ORDER by Judge Claudia Wilken dismissing case for failure to prosecute ; appeal filing ddl 3/17/98 (Date Entered: 1/16/98) (cc: all counsel) [4:97-cv-02796] (cp)

1/26/98 39 OBJECTIONS by Plaintiff Raymond Bailey Sherwood to order [38-2] [4:97-cv-02796] (cp) [Entry date 01/27/98]

1/26/98 40 DECLARATION by Raymond Bailey on behalf of Plaintiff Raymond Bailey Sherwood re objection [39-1] [4:97-cv-027961 (cp) [Entry date 01/27/98]

1/26/98 41 PROOF OF SERVICE by Plaintiff Raymond Bailey Sherwood of declaration [40-1], objection [39-1] [4:97-cv-027961 (cp) [Entry date 01/27/98]

3/10/98 42 ORDER by Judge Claudia Wilken that the court overrules plaintiff's objection to the court's order of dismissal and reaffirms dismissal of this case; no more filings shall be received in this closed docket (Date Entered: 3/13/98) (cc: all counsel) [4:97-cv-02796] (cp) [Entry date 03/13/98]

3/20/98 43 NOTICE OF APPEAL by Plaintiff Raymond Bailey Sherwood from District Court decision order [42-1] Fee status paid, receipt #804671 [4:97-cv-02796] (cp)

3/20/98 44 TRANSCRIPT DESIGNATION and Ordering Form filed by Plaintiff Raymond Bailey Sherwood for dates NOT ORDERING TRANSCRIPT C/R: ; appeal [43-1] [4:97-cv-02796] (cp)

3/20/98 – Docket fee notification form and case information sheet to USCA [43-1] [4:97-cv-02796] (cp)

3/20/98 – Copy of notice of appeal and docket sheet to all counsel [4:97-cv-02796] (cp)

3/20/98 – CERTIFICATE of Record mailed to USCA, counsel notified. [4:97-cv-02796] (cp)

Docket as of March 20, 1998 11:46 am

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
Plaintiff

No. C- 96-1828 (MHP)

v.

RAYMOND B. SHERWOOD
Respondent

_____/

PAGES 1 –16

SAN FRANCISCO, CALIFORNIA
JULY 26, 1996

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARILYN HALL PATEL

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
TAX DIVISION
FEDERAL BUILDING, 450 GOLDEN GATE AVE.
SAN FRANCISCO, CALIF. 94102

BY: DAVID DENIER, ASSISTANT UNITED STATES ATTORNEY

REPORTED BY: KAY C. HILL, CSR, RMR
CSR #2368

THE CLERK: CIVIL ACTION 96-1828, UNITED STATES VERSUS RAYMOND SHERWOOD FOR AN ORDER TO SHOW CAUSE.

COUNSEL, YOUR APPEARANCES, PLEASE.

MR. SHERWOOD: RAYMOND SHERWOOD RESPONDENT.

MR. DENIER: DAVE DENIER, UNITED STATES TAX DIVISION. GOOD MORNING, YOUR HONOR.

THE COURT: GOOD AFTERNOON.

MR. SHERWOOD, WHERE DID YOU GET THE IDEA THAT THE INTERNAL REVENUE CODE HAS NOT BEEN VALIDLY ADOPTED, THAT SOMEHOW THERE IS NO CONSTITUTIONAL JURISDICTION OVER YOU, OR OTHER KIND OF JURISDICTION OVER YOU, AND THAT YOU ARE NOT SUBJECT TO THE INTERNAL REVENUE CODE AND SO FORTH WHERE DID YOU GET THOSE IDEAS FROM? WHAt MAKES YOU DIFFERENT FROM EVERY OTHER CITIZEN IN THIS COUNTRY, OR NOT EVEN CITIZEN, JUST CITIZENS, PERSONS WHO LIVE HERE AND WORK HERE AND ARE ALIENS, OR ONES WHO ARE NOT HERE LAWFULLY PLUS PAY TAXES?

MR. SHERWOOD : I MADE NO CLAIM OF BEING A RESIDENT ALIEN OR ANYTHING LIKE THAT, YOUR HONOR.

THE COURT: HOW DO YOU – IF YOU ARE-A CITIZEN, HOW DO YOU

AVOID PAYING TAXES, OR BEING ACCOUNTABLE FOR A DETERMINATION AS TO WHAT TAX LIKBILITY YOU MAY HAVE, WHAT SETS YOU APART FROM ALL THOSE OTHER PEOPLE, ALL OF US WHO FILE INCOME TAX RETURNS AND HAVE TO PAY TAXES?

MR. SHERWOOD: THAT'S NOT MY POSITION, REALLY. BUT BEFORE WE GO – BEFORE I GO INTO THAT, I WOULD LIKE TO GET A COUPLE OF QUESTIONS ATISWERED FIRST, IF I MAY. IS THERE A COMPLAINT THAT HAS BEEN FILED IN THIS MATTER?

THE COURT: THERE IS AN ORDER TO SHOW CAUSE, AND THAT IS HOW THIS PROCEEDING, THIS TYPE OF A PROCEEDING IS COMMENCED, BECAUSE THE IRS HAS THE AUTHORITY TO C0MPEL YOU TO COME BEFORE IT. WHEN YOU DON'T APPEAR AS REQUIRED, THEN THEY ASK THE COURT FOR WHAT IS CALLED AN ORDER TO SHOW CAUSE WHY YOU SHOULD NOT BE COMPELLED TO APPEAR. AND THAT'S THE DOCUMENT WHICH THEN INITIATES THE COURT PROCEEDING.

MR. SHERWOOD: OKAY, SO THERE IS NO COMPLAINT FILED AT THE PRESENT TIME?

THE COURT: THERE IS NO COMPLAINT AND THERE NEED NOT BE IN THIS KIND OF A PROCEEDING.

THERE IS A VERIFIED PETITION THAT IS IN ESSENCE LIKE A COMPLAINT AND THAT APPRISES YOU OF ALL THE FACTS THAT SUPPORT THE REQUEST FOR THE ORDER TO SHOW CAUSE.

MR. SHERWOOD: WHICH BRINGS ME TO THE POINT, YOUR HONOR, WHY IS A STATUS CONFERENCE SCHEDULED FOR-AUGUST 16TH IF THERE IS NO COMPLAINT?

THE COURT: STATUS CONFERENCE IS AUTOMATICALLY SET SO THAT IF, IN FACT -- ESSENTIALLY IT IS SO WE DON'T LOSE CONTROL OF THE CASE. WE KNOW THERE IS A CASE THERE AND THE CASE HAS NOT BEEN COMPLIED WITH.FOR EXAMPLE, IN MOST CASES, ONCE THE ORDER TO SHOW CAUSE IS ISSUED, A PERSON GETS AHOLD OF THE U.S. ATTORNEY AND MAKES THE NECESSARY ARRANGEMENTS TO COMPLY WITH THE ORDER. SOMETIMES THAT DOESN'T HAPPEN, SOMETIMES A PERSON HASN'T BEEN SERVED, OR WHATEVER. WE HAVE A STATUS CONFERENCE, OR SOMETIMES THEY WILL COME IN, AND AFTER I HAVE ORDERED CERTAIN THINGS BE DONE, WE HAVE TO CHECK ON COMPLIANCE AND SO FORTH, AND THEY HAVE A STATUS CONFERENCE. IT HAS NOTHING DO WITH WHAT THE DOCUMENT IS THAT INITIATES THE ACTION, ALBEIT MOST CIVIL CASES DO

COMMEIICE WITH THE FILING OF A COMPLAINT, BUT THESE ARE DIFFERENT TYPE OF ACTIONS PURSUANT TO THE INTERNAL REVENUE CODE.

MR. SHERWOOD: MY RESEARCH WENT TO IF THERE WAS A JURISDICTION IN THIS ACTION THERE HAS TO BE A COMPLAINT.

THE COURT: THAT'S BECAUSE YOU ARE LOOKING AT THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH ARE GENERAL IN THEIR NATURE, AND GENERALLY APPLY TO CIVIL ACTIONS, BUT THERE ARE OTHER TYPES OF ACTIONS FOR WHICH THERE ARE STATUTORY, SPECIFIC STATUTORY PROVISIONS, AS THERE ARE WITH THESE TYPE OF PROCEEDINGS.

MR. SHERWOOD: SHOULD NOT THOSE BE ADDRESSED OR PUT FORWARD SO I KNOW HOW TO RESPOND TO THEM?

THE COURT: THIS IS WHAT THEY HAVE DONE, THEY HAVE GIVEN YOU - THE COURT HAS ISSUED AN ORDER TO SHOW CAUSE, IT IS BASED UPON THE VERIFIED PETITION SETTING FORTH THE FACTS AS TO WHAT WAS DONE OR WASN'T DONE, AND IS REQUIRED UNDER THE INTERNAL REVENUE CODE. AND IT TELLS YOU WHAT THEY ARE SEEKING. AND THAT IS VARIOUS ITEMS THEY ORIGINALLY SOUGHT BY THE AUTHORITY THEY

HAD; NAMELY, BY THEIR OWN SUMMONS.AND WHEN YOU DON'T COMPLY WITH THAT SUMMONS AND THEY HAVE TO COME INTO COURT AND SEEK BY THIS PROCEDURE TO HAVE YOU COME BEFORE THE COURT AND EXPLAIN WHY YOU SHOULDN"T BE COMPELLED TO PROVIDE WHAT IS BEING SOUGHT, OR TO GET THE IMPETUS OF THE COURT TO THEN MAKE YOU REALIZE YOU HAVE TO RESPOND TO THIS, YOU CAN'T JUST IGNORE A SUMMONS BY THE INTERNAL REVENUE CODE.

MR. SHERWOOD: YOUR HONOR UNDERSTANDS THAT I DID RESPOND TO THE SUMMONS OF THE INTERNAL REVENUE SERVICE?

THE COURT: YES, I SAW WHAT YOU SUBMITTED IN RESPONSE TO IT.

MR. SHERWOOD: A PETITION TO QUASH. BECAUSE THERE WAS NO COURT TO SEND THE PETITION TO QUASH TO, I HAD TO SEND IT TO WHOEVER SENT THE ORIGINAL SUMMONS.

THE COURT: WELL, IN OTHER WORDS, YOU DIDN'T RESPOND TO THE SUMMONS BY PROVIDING WHAT THEY WANTED AND WHAT THEY SAID THEY ARE ENTITLED TO, SO THEY HAVE NOW FILED THIS PETITION HERE TO GET YOU TO DO THAT.

MR. SHERWOOD: MY POINT IS, BECAUSE WE ARE HERE TODAY ON THIS SUMMONS IS EXACTLY WHERE THE LAW GOES TO.THERE IS NO LAW THAT COMPELS ME TO ANSWER AN IRS SUMMONS, THAT I CAN FIND. IN FACT, IF WE GET INTO IT, BY THE NEWT GINGRICH, TOM FOLEY, TIP O'NIEIL, SPEAKERS OF THE HOUSE, HEADING PAGE TO THE HOUSE OF REPRESENTATIVES OF DOCUMENTS SAYS TITLE 26 HAS NEVER BEEN ENACTED INTO THE LAW. WHY AM I COMPELLED TO ANSWER THAT IF IT HAS NOT BEEN ENACTED INTO LAW?

THE COURT: WHERE DID YOU EVER GET THAT IDEA FROM?

MR. SHERWOOD: WELL, I AM READING IT, IT IS IN MY EVIDENCE, AND I HAVE, IF YOUR HONOR PLEASES, MORE SUBSTANTIATING EVIDENCE TO THAT FACT.

THE COURT: WELL, THE COURTS HAVE DEALT WITH THIS SO MANY TIMES IT ISN'T FUZINY, INCLUDING THE SUPREME COURT.AND THE NOTION THAT THE INTERNAL REVENUE CODE WAS NEVER ADOPTED, WHY DON'T YOU ASK NEWT GINGRICH OR TOM FOLEY – WELL, YOU WON'T BE ABLE TO ASK TIP O'NEIL, SADLY, BUT IF THEY PAY TAXES, AND UNDER WHAT AUTHORITY DO THEY, ARE THEY JUST DOING IT VOLUNTARILY BECAUSE

THEY LOVE THEIR COUNTRY AND NOT BECAUSE THEY ARE REQUIRED TO BY TITLE 26 OF THE REVENUE CODE?

MR. SHERWOOD: YOUR HONOR, I PAY TAXES. TITLE 26, BY THE EVIDENCE THAT I HAVE PRESENTED, HAS NOT BEEN ENACTED INTO LAW.

THE COURT; MR. SHERWOOD, I AM NOT GOING TO WASTE MY TIME WITH THAT NOTION, THAT IS TOTAL BALDERDASH, AND THE COURTS HAVE HELD THAT REPEATEDLY.IF YOU REALLY BELIEVE THAT, THEN I THINK YOU ARE DELUDING YOURSELF IS WHAT YOU ARE DOING, AND THAT IS SAD, BECAUSE TITLE 26 GOVERNS ALL-THE PROCEEDINGS FOR ALL MATTERS REGARDING TAXES PAYABLE TO THE UNITED STATES AND THE METHODS BY WHICH IT IS ACCOMPLISHED AND SO FORTH. AND ANYBODY WHO SAYS OTHERWISE IS TELLING YOU NONSENSE. AND THE COURTS HAVE UNIFORMLY HELD THAT FOR YEARS. IT IS NOT EVEN DIGNIFIED, I WOULDN'T DIGNIFY IT WITH AN ANSWER.

MR. SHERWOOD: THERE WERE OTHER PIECES OF EVIDENCE THAT I SUBMITTED THAT WILL PROBABLY -- THE COURT WILL PROBABLY LEND THE SAME CREDENCE TO, SO I WON'T GO INTO IT AT THIS TIME.

THE COURT: THEY DON'T SUPPORT ANY NOTION THAT SOMEHOW YOU DON'T HAVE TO RESPOND TO EITHER THE SUMMONS THAT WAS SERVED UPON YOU AND THE DOCUMENTS THAT ARE SOUGHT, NOR WHAT IS NOW BEING SOUGHT BY THE IRS, AND NOW IS BEING SOUGHT FROM YOU HERE IN COURT BY WAY OF THE ORDER TO SHOW CAUSE. THEY MAY PERSUADE YOU, BUT THEY HAVE NEVER PERSUADED ANY COURT, AND THEY DON'T PERSUADE ME.

MR. SHERWOOD: MAY I GO TO THE SUMMONS ITSELF IN THE VERIFIED PETITION OF MRS. AGUILAR?

THE COURT; WHAT IN PARTICULAR ARE YOU REFERRING TO?

MR. SHERWOOD: WHAT I AM PARTICULARLY REFERRING TO IS IN HER VERIFIED PETITION, SHE SAYS SHE HAS NO RECORDS TO ESTABLISH A LIABILITY FOR ME TO RESPOND.IF SHE HAS NO RECORDS TO ESTABLISH A LIABILITY, WHAT BASIS DID SHE USE TO INITIATE COLLECTION ACTION IN SEPTEMBER OF 1995. NOW EITHER SHE HAD RECORDS OR SHE DOESN'T HAVE RECORDS. IF SHE HAS THE RECORDS, THEN SHE HAS LIED IN HER VERIFIED PETITION. AND IF SHE DOESN'T HAVE THE RECORDS, THEN SHE HAD NO BASIS FOR PUTTING COLLECTION ACTION ON ME IN

SEPTEMBER OF 1995.

MR. DENIER: YOUR HONOR, IF I MAY ASSIST THE COURT, THERE WERE TWO SUMMONS, ONE WAS A COLLECTION SUMMONS WITH RESPECT TO COLLECTIONS ALREADY MADE FROM 1989 TO 1991. THE SECOND IS A SUMMONS FOR DOCUMENTS THAT WOULD HELP HER DETERMINE HIS 1984 TAX LIABILITY. SO MR. SHERWOOD IS A LITTLE CONFUSED HERE. THE COLLECTION ACTUALLY DOESN'T RELATE TO 1994 BECAUSE WE DON'T HAVE AN ASSESSMENT THEN, WE HAVEN'T DETERMINED HIS LIABILITY FOR 1994.

THE COURT: WAS IT 1994?

MR. DENIER: 1994-.IS THE SUMMONS SEEKING INFORMATION TO DETERMINE HIS LIABILITY FOR THAT YEAR. THERE HAVE ALREADY BEEN DETERMINATIONS AND ASSESSMENTS MADE WITH RESPECT TO THE EARLIER YEARS, AND FOR THOSE YEARS WE ARE SEEKING INFORMATION OF ASSETS AND LIABILITIES SO WE CAN DETERMINE HOW TO COLLECT THOSE LIABILITIES.

THE COURT: FOR WHAT YEARS HAS – IN THE PAST HAS MR. SHERWOOD FILED INCOME TAX STATEMENTS?

MR. DENIER: I DON'T HAVE THAT INFORMATION BEFORE ME, BUT YOU CAN ASK MR. SHERWOOD THAT INFORMATION.

MR. SHERWOOD: I FILED ALL YEARS EXCEPT 1989, 19901 1991 AND 1994. ALL OTHER YEARS RAVE BEEN FILED.

I THINK IF YOU LOOK AT WHAT SHE HAS PRESENTED IN HER VERIFIED PETITION, I SEE NO DIFFERENCE BETWEEN 1989, '90 AND '91 IN ONE PARAGRAPH, AND THEN GOING FOR 1994 IN THE OTHER PARAGRAPH.

THE COURT: WELL, THEY SUBMITTED – YOU RECEIVED, I ASSUME, THE NOTICE OF LEVY ON WAGES AND SO FORTH, AND IT LISTS AT LEAST WHAT THEY KNOW AS OF THAT TIME, BUT THEY LIST FOR 1989, 1990, 1991. NOW, YOU DIDN'T FILE RETURNS IN THOSE YEARS?

MR. SHERWOOD: NO, MAMAM, I DID NOT.

THE COURT: AND SO YOU ARE NOT BEING VERY HELPFUL WITH THEM IN TRYING TO DETERMINE WHAT TAXES YOU MAY BE LIABLE FOR IF YOU DON'T FILE A RETURN.

MR. SHERWOOD: BUT THEY INITIATED THE COLLECTION ACTION FOR 1989, 1990 AND 1991 WHEN THEY SAY THEY HAD NO RECORDS TO DO THIS.

THE COURT: WELL, THAT'S NOT TRUE. THERE ARE EXHIBITS THAT ARE APPENDED HERE THAT REFLECT PAYMENTS FOR -FROM BUFFALO AIRWAYS.AIRWAYS? WERE YOU EMPLOYED BY SOMETHING CALLED BUFFALO

MR. SHERWOOD . YES, MAMAM.

THE COURT: THAT IS AN AIRLINE?

MR. SHERWOOD: YES, MAMAM, KANSAS CITY, MISSOURI.

THE COURT: WHAT IS IT WITH PILOTS, OR AIRLINE EMPLOYEES, DO THEY HAVE SOME NOTION THAT -- SOMEBODY SENDS THEM LITERATURE AROUND THE AIRLINES AND TELLS THEM THEY DON'T HAVE TO PAY TAXES?

MR. SHERWOOD: I HAVE NEVER BEEN INVOLVED IN ANY OF THAT.

THE COURT: IT WOULDN'T BE THE FIRST TIME I HAVE HAD AIRLINE EMPLOYEES WHO DIDN'T THINK THEY NEEDED TO PAY TAXES.

MR. DENIER: MR. SHERWOOD IS CONFUSING THINGS. THE SUMMONS, WITH RESPECT TO '89, '90 AND '91 IS PURELY A COLLECTION SUMMONS. HOW THEY DETERMINED HIS TAX LIABILITY, THEY DETERMINED FOR WHATEVER INFORMATION THEY COULD GET FOR THOSE YEARS, BUT THAT IS SEPARATE AND DISTINCT FROM 1994.

AND PROBABLY, TO FURTHER HELP HIM ALONG, SIMPLY BECAUSE WE MAY HAVE SOME INFORMATION TO DETERMINE LIABILITY DOESN'T MEAN WE ARE PROHIBITED FROM SUMMONING INFORMATION FROM HIM TO MORE ACCURATELY DETERMINE HIS CORRECT TAX LIABILITY.

YOU MIGHT NOTICE IN THE SUMMONS WE ASKED FOR INFORMATION WHICH COULD ESTABLISH DEDUCTIONS. I MEAN, WE ARE IN A SITUATION WHEN A TAX PAYER LIKE MR. SHERWOOD DOES NOT FILE A RETURN, OR REFUSES TO TRY AND RECONSTRUCT HIS TAX RETURN, WE MAY HAVE, IF HE IS A W-2 WAGE EARNER, WE MAY HAVE INFORMATION INDICATING SOME INCOME. WE MAY HAVE INFORMATION OF 1099S FROM BANKS INDICATING OTHER INCOME. WE HAVE PROBABLY NO INFORMATION, EXCEPT MAYBE A MORTGAGE, HE MIGHT HAVE INFORMATION FILED. I AM NOT SURE THEY HAVE ACCESS TO THAT TO DETERMINE HIS DEDUCTIONS. SO ALL SHE IS TRYING TO DO IS HELP HIM GET AII ACCURATE DETERMINATION OF HIS TAX LIABILITY, AIID WE ARE ENTITLED TO SEEK THAT INFORMATION. WE ARE NOT LIMITED TO WHAT LITTLE INFORMATION WE CAN FIND. WE ARE ENTITLED TO GO AHEAD

A-42 cont.

AND TRY TO DETERMINE THE CORRECT TAX LIABILITY.

THE COURT: FOR -89, '90 AND '91, THEY HAVE ALREADY MADE THAT DETERMINATION BASED UPON WHAT WAS AVAILABLE TO THEM. THEY CANNOT DO THAT FOR 1994 BECAUSE THEY DON'T HAVE ANY INFORMATION. BUT YOU FILED A RETURN I N '93?

MR. SHERWOOD: YES, MA-AM, AND 1992. AND ON JULY THE 16TH, I RECEIVED A CORRECTION FROM MRS. AGUILAR TO A LEVY OR LIEN ON SOME PROPERTY THAT I HAVE, AND SHE INCLUDES 1992. SHE ISSUED TWO NOTICES OF LIEN FOR THE SAME YEARS IN QUESTION, AND THE FIGURES DON'T JIVE IN EITHER ONE OF THEM. ON ONE OF THEM SHE INCLUDED 1992, AND IT IS HARD FOR ME TO HAVE ANY CONFIDENCE SHE IS TRYING TO HELP ME IN DETERMINING THE TAX LIABILITY WHEN SHE KEEPS RUNNING A-ROUND AND ADDING OTHER THINGS TO IT.

THE COURT: HOW WAS SHE SUPPOSE TO DETERMINE IT AT ALL FOR 1994, OR ANY OF THESE OTHER YEARS, WHEN YOU DON'T FILE RETURNS? DID YOU HAVE INCOME IN 1994?

MR. SHERWOOD: SOME, YES, MAMAM.

THE COURT: WERE YOU EMPLOYED BY SOMEBODY ELSE OR SELF-EMPLOYED?

MR. SHERWOOD: PARTIALLY EMPLOYED. I WAS LAID OFF. I WORKED SOME, AND SOME I DIDN'T WORK.

THE COURT: WELL, YOU NEED TO FILE A RETURN. AND THEN YOU CAN LET THEM KNOW HOW MUCH YOU EARNED AND HOW MANY DEDUCTIONS. AND IT MAY BE YOU ARE ENTITLED TO A REFUND, BUT THAT DOESN'T HAPPEN IF YOU DON'T FILE A RETURN.

I AM CURIOUS AS TO WHY YOU THINK YOU WERE EXEMPT IN '89, '90 AND '91 AND '94 BUT NOT IN '921 '93 AND MAYBE EARLIER YEARS.

MR. SHERWOOD: I DON'T WISH TO BORE THE COURT WITH THE PAST, BUT I WAS BEFORE THE JUDGE IN 1982-ISH. I DON'T KNOW WHETHER YOU REMEMBER OR NOT, BECAUSE OF A LOT OF STUFF WHERE THE IRS HAD PROMISED A REFUND OF AN OVERPAYMENT THAT THEY NEVER GAVE ME, THEY DENIED ME AND FORCED ME TO GO TO COURT TO GET THE MONEY. YOUR HONOR GRANTED MY COURT CASE TO GIVE ME THE MONEY, AND I NEVER RECEIVED THE MONEY. IT WAS APPLIED TO WHAT I THINK WAS AN ERRONEOUS 1988 CLAIM, BOGUS CLAIM BY THE IRS. AND AT THAT TIME I FIGURED, RIGHT OR WRONG, THAT I WAS THE VICTIM OF ABUSE FOR CHALLENGING THEM AND THAT I

WAS GOING TO STOP FOR FIVE YEARS. THAT WAS MY DECISION.

THE COURT: THEN YOU WOULD RATHER FIND YOURSELF IN A POSITION AT SOME POINT BEING CHARGED CRIMINALLY? THAT MAKES NO SENSE. WELL, AT ANY RATE, I AM GOING TO ISSUE THE ORDER TO SHOW CAUSE, AND YOU ARE GOING TO BE COMPELLED WITHIN A CERTAIN PERIOD OF TIME TO TURN OVER THE DOCUMENTS AND RECORDS, AND SO FORTH, THAT ARE SOUGHT BY VIRTUE OF THE ORDER TO SHOW CAUSE. AND OTHERWISE RESPOND TO QUESTIONS. AND WHAT IS A REASONABLE PERIOD OF TIME AS FAR AS BOTH PARTIES ARE CONCERNED IN WHICH TO ACCOMPLISH THAT?

MR. DENIER: YOUR HONOR, I HAVE A PROPOSED ORDER WHICH ALLOWS MR. SHERWOOD TWO WEEKS, AND ASKS HIM TO APPEAR BY AUGUST 9TH. THE COURT COULD MODIFY THAT. WE THINK HE HAS HAD THE SUMMONS SINCE FEBRUARY, HE HAS HAD FIVE MONTHS TO ACCUMULATE WHATEVER DOCUMENTS OR INFORMATION HE NEEDS.

THE COURT: COULD YOU HAVE YOUR BOOKS AND RECORDS IN HERE IN TWO WEEKS?

MR. SHERWOOD: MAY I ASK A COUPLE OF QUESTIONS BEFORE I

A-42 cont.

RESPOND TO THAT, PLEASE?

THE COURT: YES.

MR. SHERWOOD: DO I HAVE AN APPEAL RIGHT TO THIS DECISION THAT YOU ARE GRANTING THAT I HAVE TO SHOW CAUSE?

THE COURT: YES, YOU DO. BUT YOU MAY WANT TO TAKE A LOOK AT SOME OF THOSE APPELLATE DECISIONS, BECAUSE MORE THAN ONE PERSON -- YOU CAN TELL ME HOW MANY -- HAVE BEEN SANCTIONED BY THE COURT OF APPEALS; IN OTHER WORDS, IMPOSE MONETARY SANCTIONS PAYABLE TO THE COURT FOR ESSENTIALLY WHAT THEY VIEW AS FRIVOLOUS APPEALS, SO YOU MAY WANT TO TAKE A LOOK AT THOSE CASES.

MR. SHERWOOD: MY SECOND PROBLEM IS THAT WE HAVE HAD A MAJOR ACCIDENT IN MY HOUSE, AND MY WIFE WAS BUSTED UP. I HAVE HER HOME FROM THE HOSPITAL, AND MOST OF MY TIME IS SPENT TAKING CA.RE OF HER. AND IF I HAD TO RESPOND TO THIS, I WOULD LIKE A LITTLE LONGER PERIOD OF TIME.

THE COURT: 30 DAYS?

MR. SHERWOOD: 30 OR 45. 45 WOULD REALLY BE A HELP, IF I COULD HAVE 45 DAYS.

THE COURT: YOU HAVE WAITED THIS LONG, YOU ARE UNDER AN ORDER, AND IF YOU WOULD INCLUDE IN THAT AKID *MAKE* SURE NO RECORDS, BOOKS OR DOCUMENTS, ANYTHING AT ALL THAT MAY RELATE TO ANYTHING THAT WOULD BE HELPFUL IN ASSESSING TAX LIABILITY, NONE OF THAT IS TO BE DESTROYED.

MR. SHERWOOD: I DON'T OPERATE THAT WAY, YOUR HONOR.

THE COURT: I JUST WANT TO MAKE IT CLEAR. WOULD YOU ADD THAT TO THE ORDER THEN, AND SUBMIT IT, AND WE'LL PUT IT FOR 45 DAYS.

MR. DENIER: I WILL, YOUR HONOR.

THE COURT: OKAY. MR. SHERWOOD:

MR. SHERWOOD: AND YOU WILL COPY ME ON IT?

THE COURT: YOU WILL GET A COPY WITH THE COURT AFTER I HAVE SIGNED IT AND IT HAS BEEN FILED.

MR. SHERWOOD: NICE TO SEE YOU AGAIN.

THE COURT: NOW FILE YOUR RETURNS AND DON'T GET INTO TROUBLE, MR. SHERWOOD.

PARALLEL TABLE OF AUTHORITIES AND RULES

The following table lists rulemaking authority (except 5 U.S.C. 301) for regulations codified in the *Code of federal Regulations*. Also included are statutory citations which are noted as being interpreted or applied by those regulations.

The table is divided into four segments: United States Code citations, United States Statutes at Large citations, public law citations, and Presidential document citations. Within each segment the citations are arranged in numerical order:

For the United States Code, by title and section;

For the United States Statutes at Large, by volume and page number.

For public laws, by number; and

For Presidential documents (Proclamations, Executive orders, and Reorganization plans) by document number.

Entries in the table are taken directly from the rulemaking authority citation provided by Federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate. Because Federal agencies sometimes present these citations in an inconsistent manner, the table cannot be considered all-inclusive.

The portion of the table listing the United States Code citations is the most comprehensive, as these citations are entered into the table whenever they are given in the

authority citations provided by the agencies. United States Statutes at Large and public law citations are carried in the table only when there are no corresponding United States Code citations given.

For a list of current public laws cited as rulemaking authority, see the Parallel Table of Authorities and Rules in the monthly "List of CFR Sections Affected" (LSA).

This table is revised as of January 1, 1995. Additions and removals to the table resulting from regulations published in the *Federal Register* since January 1, 1995, are found in the current month's edition of the LSA.

Authorities

26 U.S.C. (1986 I.R.C.) Continued CFR

6001.....26 Parts 1, 31, 55, 156
27 Parts 19, 53, 194, 250, 296

6011 – 6012.....26 Part 1

6011.....26 Parts 31, 40, 55, 156, 301
.... 27 Parts 25, 53, 194

6015.....26 Part 1

6020 .....27 Parts 53, 70

6021.....27 Parts 53, 70

6031.....26 Part 1

6033.....26 Part 301

6036.....26 Part 301

6038 – 6038B.....26 Part 1

6038A.....26 Part 1

6039A.....26 Part 7

6041.....26 Part 1

6043.....26 Part 1

6045.....26 Parts 1, 5f

6047.....26 Part 35

6048.....26 Part 404

6049.....26 Part 1

6050D.....26 Parts 1, 602

6050H – 6050I-1.....26 Part 1

6050K – 6050L.....26 Part 1

6050M.....26 Parts 1, 301

6050P.....26 Part 1

6051 ....26 Part 31

6053.....26 Part 31

6056.....27 Part 22

6059.....26 Part 301

6060.....26 Part 1

6061.....26 Part 156
27 Parts 22, 25, 53, 194, 270, 285, 290

6064.....27 Part 70

6065.....26 Part 1
27 Parts 18, 20, 22, 24, 25,
194, 197, 252, 270, 285,290

6071..... 26 Parts 1, 31, 40, 55, 154, 156
..... 27 Parts 53, 194

6081.....27 Part 53

A-43 cont.
6090.....26 Part 43

6091.....26 Parts 1, 40, 44, 46, 55, 156,
... 27 Parts 24, 25, 53, 194, 197,

6101 – 6104.....27 Part 53

6101.....26 Part 40

6102.....27 Part 70

6103 – 6104..... 26 Part 301

6103.....20 Parts 401, 422
42 Parts 401

6109.....26 Parts 35a, 40, 150
27 Parts 19, 22, 24, 53, 194, 197, 270, 285

6111 –6112.....26 Part 301

6151.....27 Parts 22, 25, 53, 194, 270, 290

6154.....26 Part 1

6155.....27 Parts 53, 70

6157..... 26 Part 31

6158.....26 Part 301

6159.....27 Part 70

6161.....26 Part 158.
.27 Part 53

6201.....27 Part 70

A-43 cont.
6203 – 6204.....27 Part 70

A-43 cont.

6205.....26 Part 31

6223..... .....26 Part 301

6227.....26 Part 301

6230 – 6231..... ... 26 Parts 1, 301

6232.....26 Parts 41, 150

6233.....26 Part 301

6241.....26 Part 301

6245.....26 Part 301

6301 – 6303.....27 Part 53

6301-6302.....27 Part 24

6301 – 6302.....27 Parts 24.
25, 250, 270, 275.

6301.....27 Part 70

6302..... ....26 Parts 1, 31, 40,
27 Parts 19, 251, 285
31 Parts 203, 214

6303.....27 Part 70

6311.....27 Parts 19, 24, 25, 53, 70, 194, 270

6313 - 6314.....27 Part 70

6313.....27 Parts 25, 270, 275, 295.
A-43 cont.
6314.....27 Part 194

6321..... .27 Part 70

6323.....26 Part 1
27 Part 70

6324A – 6324B..... .26 Part 301

6325.....26 Part 401
.....27 Part 70

6326.....26 Part 301
27 Part 70

6331 – 6343.....27 Part 70

6334..... 26 Part 404

6364.....26 Part 31

6401.....27 Part 70

6402.....27 Parts 25, 53, 194, 197, 270, 285, 290.

6404..... ...26 Part 301
27 Parts 53, 70, 270, 275, 285, 290

6407.....27 Part 70

6416.....27 Parts 53, 70.

6423.....27 Parts 70, 270

6426.....26 Part 154

6501.....27 Part 70

6503.....27 Part 70

6511.....27 Parts 70, 194, 197

6513 – 6514.....27 Part 70

6532.....27 Part 70

6601 – 6602.....27 Part 70

6601.....27 Parts170, 194, 296

6611.....27 Part 70

6621 – 6622..... 27 Parts 70, 170, 206,
24, 25, 197, 270, 285

6689.....26 Part 301

6701.....27 Part 70

6721.....26 Part 35a

6723.....27 Part 70

6801.....27 Part 70

6804.....27 Part 250

6806.....27 Parts 19, 22, 25, 270, 285, 290

6851.....26 Part 1

6862 – 6863.....27 Part 70

6867.....26 Parts 1, 301

6901.....27 Part 70

7011.....27 Parts 19, 22, 24, 25, 70, 194, 270, 285, 290

7025.....27 Part 197

7101 - 7102.....27 Part 250

7101..... 26 Part 403
27 Parts 72, 275

7102.....27 Parts 70, 250

7121 - 7122.....27 Part 70

7207.....27 Part 70

7209.....27 Part 70

7212.....27 Parts 170, 270, 275, 285, 290, 295, 296

7213..... 27 Part 197

7214.....27 Part 70

7216.....26 Parts 1, 301

7302.....27 Parts 24, 252

7304.....27 Part 70

7322 – 7327.....26 Part 403

7322 – 7326.....27 Part 72

7325.....27 Parts 270, 285

7326.....27 Part 72

7327.....27 Part 72

7342.....27 Parts 24, 25, 170. 270, 275, 285, 290, 295, 296

7401.....27 Part 70

7403.....27 Part 70

7406.....27 Part 70

7423 – 7426.....27 Part 70

7429 – 7430.....27 Part 70

7432.....27 Part 70

7502 – 7503.....27 Parts 24, 70, 270

7505 – 7506.....27 Part 70

7510.....27 Part 19

7513.....27 Part 70

7519.....26 Part 1

7520.....26 Parts 1, 20, 25, 301

7601 – 7606..... ...27 Part 70

7602.....27 Parts 170, 296

7606.....27 Parts 24, 25, 170, 270, 285, 290, 285, 296

7608.....27 Parts 70, 170, 296

7610.....27 Part 70

7622 – 7623.....27 Part 70

7624.....26 Part 301

7651 et seq.....40 Part 76

7651 – 7652.....27 Part 250

7652.....27 Part 275

7653.....27 Part 70

7654.....26 Part 1

7701.....26 Parts 1, 31, 301

....7804.....26 Part 1

7805.....20 Part 615
26 Parts 1, 3

PREFACE – 1994 EDITION

This twelfth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, Is a consolidation and codification of all the general and permanent laws of the United States In force on January 4, 1995. By statutory authority, this edition may be cited "U.S.C. 1994 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, and 1982.

Because many of the general and permanent laws that are required to be Incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment Into positive law. each title of the Code. When this project Is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1. 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46. and 49 have been revised, codified, and enacted into positive law and the text thereof Is legal evidence of the laws therein

contained. The matter contained in the other titles of the Code is prima facie evidence of the laws.

The title and chapter structure of the 1988 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1988.

This edition was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts to make this edition as nearly perfect as possible.

Signed NEWT GINGRICH
Speaker of the House of Representatives

WASHINGTON, D.C. January 4, 1995
(see: page vii Preface Page United States Code)

PREFACE – 1988 EDITION

This eleventh edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 3, 1989. By statutory authority, this edition may be cited "U.S.C. 1988 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952, 1958, 1964, 1970, 1976, and 1982.

Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing, comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46, and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein

contained. The matter contained in the other titles of the Code is prima facie evidence of the laws. The title and chapter structure of the 1982 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1982.

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Signed THOMAS FOLEY
Speaker of the House of Representatives

WASHINGTON, D.C. June 30, 1989
(see: page vii Preface Page United States Code)

PREFACE-1982 EDITION

This tenth edition of the United States Code, prepared and published pursuant to section 285b of Title 2 of the Code, is a consolidation and codification of all the general and permanent laws of the United States in force on January 14. *1983.* By statutory authority, this edition may be cited "U.S.C. 1982 ed.". Previous editions were published in 1926, 1934, 1940, 1946, 1952. 1958, 1964, 1970, and 1976.Because many of the general and permanent laws that are required to be incorporated in the Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing. comprehensive project authorized by law to revise and codify, for enactment Into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary. Titles 1. 3. 4. 5. 9, 10, 11, 13, 14, 17, 18, 23, 28. 31. 32, 35, 37, 38, 39, 44. and 49 have been revised, codified, and enacted into positive law and the text thereof Is legal evidence of the laws

therein contained. The matter contained in the other titles of the Code is prima facie evidence of the laws.

The title and chapter structure of the 1978 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1976.

This edition was prepared and published under the supervision of Edward P. Willett, Jr., Law Revision Counsel of the House of Representatives.]with the assistance of the 'West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts to make this edition as nearly perfect as possible.

Signed THOMAS P. O'NEILL

Speaker of the House of Representatives

Washington, D.C., January 14, 1983

United States Code Titles As Positive Law

The following titles of the United States Code have been enacted into positive law by the acts enumerated below:

Title 1, General Provisions.

Title 3, The President.

Title 4, Flag and Seal, Seat od Government, and the States.

Title 5, Government Organization and Employees.

Title 6, Surety Bonds.

Title 9, Arbitration.

Title 10, Armed Forces.

Title 11, Bankruptcy.

Title 13, Census.

Title 14, Coast Guard.

Title 17, Copyrights.

Title 18, Crimes and Criminal Procedure.

Title 23, Highways.

Title 28, Judiciary and Judiciary Procedure.

Title 31, Money and Finance.

Title 32, National Guard.

Title 35, Patents.

Title 37, Pay and Allowances of the Uniformed Services.

Title 38, Veterans' Benefits.

Title 39, Postal Service.

Title 44, Public Printing and Documents.

Title 46, Shipping.

Title 49, Transportation.

NOTE: Title 26 is not listed.

UNITED STATES DISTRICT COURT

Raymond Bailey Sherwood

Plaintiff,

SUMMONS IN A CIVIL CASE

CASE NUMBER: C 97 2796 CW

V.

MARILYN HALL PATEL

Defendant.

TO:
Marilyn Hall Patel
United States Federal Judge
Northern District of California
450 Golden Gate Ave.
San Francisco, Calif.

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

Raymond B. Sherwood
1612 Merian Dr.
Pleasant Hill, Calif. 94523

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Stamped RICHARD W. WIEKING Date: JUL 30 1997

Signed MARY ANN BUCKLEY Deputy Clerk